Appendix 9.3

Applicable Federal Register Excerpts

TCM Substitution

the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 915

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 12, 2002.

Jeffrey D. Jarrett,

Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons set out in the preamble, 30 CFR Part 915 is amended as set forth below:

PART 915—IOWA

1. The authority citation for Part 915 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 915.25 is added to read as follows:

§ 915.25 Approval of Iowa abandoned mine land reclamation plan amendments.

The following is a list of the dates amendments were submitted to OSM, the dates when the Director's decision approving all or portions of these amendments were published in the **Federal Register**, and the State citations or a brief description of each amendment. The amendments in this table are listed in the order of the date of final publication in the **Federal Register**.

Original amendment submission date	Date of final publication	Citation/description
June 14, 2002	December 5, 2002	Emergency response reclamation program; AMLR Plan sections I. through IV., V.B. and C.; Iowa Code (IC) 207.21 subsection 2.a.(2) through 2.b. and subsection 3.d.; 207.23; and 207.29.

[FR Doc. 02–30608 Filed 12–4–02; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–127–1–7555; FRL–7416–5]

Approval and Promulgation of Implementation Plans for Texas: Transportation Control Measures Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final action, the EPA is approving a revision to the Texas State Implementation Plan (SIP) that contains the transportation control measures (TCM) rule. The requirements in the State TCM rule address the roles and responsibilities of the Metropolitan Planning Organizations (MPO), implementing transportation agencies, and provide a method for substitution of specific TCMs without a SIP revision in the nonattainment and maintenance areas. The TCM rule is intended to promote effective implementation of TCMs, provide consequences for non-implementation, establish a streamline TCM substitution process and approval, and increase interaction between the Texas Commission on Environmental Quality (TCEQ) [1] and the MPOs in the air quality transportation planning process at the local levels. The EPA is approving this SIP revision under section 110(k) and 182 of the Clean Air Act (CAA). The rationale for the final approval action and other information are provided in this document.

EFFECTIVE DATE: This final rule is effective on January 6, 2003.

ADDRESSES: Copies of the relevant material for this action are available for inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment at least 24 hours before the visiting day.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Suite 700, Dallas, TX 75202–2377.

Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7186.

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA.

Table of Contents

I. What Is the Background for This Action?

Section 182(d)(1)(A) of the CAA requires States containing ozone nonattainment areas which are classified as ''severe'' pursuant to section 181(a) of the CAA to adopt TCM and transportation control strategies to offset any growth in emissions from growth in Vehicle Miles Traveled (VMT) or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the CAA's Reasonable Further Progress (RFP) milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the General Preamble to Title I of the CAA (57 FR 13498), April 16, 1992, and in section 182(d)(1)(A).

In addition, the states may adopt TCMs as control strategies in order to meet the requirements of sections 182(b) and 182(c) of the CAA for RFP and attainment SIPs in the ozone nonattainment areas. The EPA can only accept the emission credits resulting from such TCMs if the State can provide adequate evidence that it will have authority to enforce the TCMs which are identified as a part of the control strategy in the RFP and attainment demonstration SIPs for meeting the ozone standard.[2] The State of Texas has adopted certain TCMs for meeting the RFP and attainment demonstration requirements under sections 182(b) and (c) of the CAA.

Our action today addresses the State's authority, processes, procedures, and responsibilities of each agency regarding implementation and substitution of the TCMs in any SIP in the designated nonattainment or maintenance areas.

[1] Recently, this organization changed its name from Texas Natural Resource Conservation Commission (TNRCC).

[2] See section 110(a)(2)(A) of the CAA.

II. What Did the State Submit and How Did We Evaluate It?

The Governor of Texas submitted the TCM SIP revision on May 17, 2000. The TCEQ adopted the Texas TCM rule on May 9, 2000, after appropriate public notice and hearing. The TCM rule consists of two parts. 30 Texas Administrative Code (TAC) Chapter 114 Section 114.5 includes ''Transportation Planning Definitions.'' 30 TAC Chapter 114 Section 114.270 contains ''Transportation Control Measures,'' which addresses the roles and responsibilities of the MPOs and implementing transportation agencies in nonattainment and maintenance areas and provides a method for the substitution of TCMs. The TCEQ developed the TCM rule in cooperation with the MPOs, the Texas Department of Transportation, and in consultation with the Federal Highway Administration, Federal Transit Administration, and the EPA. The State TCM rule identifies the responsibility of each agency and sets forth the procedures and processes for selection of the TCMs, inclusion in the SIP, periodic reporting and record-keeping, corrective measures, emissions reductions and TCM effectiveness, and consequences of non-implementation. In addition, the rule specifically establishes processes and procedures for substitution of any TCM in the SIP that cannot be implemented for any reason by the implementation date in the SIP. The TCM rule guarantees that substituted TCMs will be both equivalent [3] in terms of emissions, and enforceable.[4] The procedures for substitution of the TCMs require public notice and comment period and consultation, but do not require a formal SIP revision and approval by the EPA.

We have reviewed the State TCM processes and procedures, and we have evaluated the provisions of the rule based on the criteria provided in the CAA for development of SIPs in the nonattainment and maintenance areas. We note that neither the CAA nor the EPA rules require the State to develop, and submit as a SIP revision, a TCM rule. Our evaluation is specifically based on sections 110, 176, 182, and consistency of this rule with the CAA. Based on this review, we have determined that the TCEQ's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. Therefore, we are approving this SIP revision.

III. Responses to Comments on the Direct Final Action

On July 16, 2001, the EPA published a direct final rule approving this revision to the Texas SIP containing the TCM rule. This rule contained the condition that if any adverse comments were received by the end of the public comment period on August 15, 2001, the direct final rule would be withdrawn, and we would respond to the comments in a subsequent final action. One set of comments was received from the Committees for Land, Air, Water, and Species (CLAWS). The following summarizes the comments and EPA's response to these comments:

Comment 1: This comment states that the criteria for when a TCM substitution is appropriate must be specified. Substitution ''for any reason'' is not appropriate. MPOs can simply evade non-implementation issues through abuse of the substitution process.

Response: 30 TAC section 114.270(f)(1)(A) requires that a substitute TCM provide for equivalent or greater emissions reductions than the TCM to be replaced. EPA feels that this prevents MPOs from either substituting a TCM with one that does not provide an equivalent level of emissions reductions, or simply withdrawing or failing to implement a TCM.

Furthermore, 30 TAC section 114.270(c) requires that all TCMs be developed, coordinated, funded, approved, implemented, tracked, evaluated, and monitored in accordance with 30 TAC section 114.260 (relating to Transportation Conformity); Title 40 Code of Federal Regulations, part 93 (Conformity to State or Federal Implementation Plans of Transportation Plans); the Federal Clean Air Act; and the EPA TCM SIP approval criteria listed in the EPA guidance document ''Transportation Control Measures: State Implementation Plan Guidance, EPA 450/2–89–020, September 1990.'' EPA believes that this ensures that the TCM substitution process will be adequately monitored, tracked, and if necessary properly enforced.

Comment 2: This comment states that the public should have a representative in the working group that evaluates alternative TCMs.

Response: A public hearing is required by 30 TAC section 114.270(f)(5) prior to a substitution being made. The public will have a minimum of 30 days prior to the hearing to submit comments. Comments can also be submitted during the public hearing itself. EPA believes that this affords the public ample opportunity to be engaged in the TCM substitution process.

Comment 3: This comment states that EPA's concurrence period of 14 days is too short and unreasonable. The period should be at least 60 days. EPA must make an independent finding of TCM equivalency and publish it in the **Federal Register**.

Response: As required by 30 TAC sections 114.270(f)(3), and 114.270(f)(4), in order to identify and evaluate possible substitute TCMs, the MPO must form a committee or working group which will consult with EPA Region 6. The MPO, the TCEQ, and the EPA Region 6 must concur with the appropriateness and equivalency of the substitute TCM. Consequently, EPA will be fully engaged in the TCM substitution process prior to the final 14 day concurrence period cited in the comment, and will have ample opportunity to conduct its analysis.

Regarding the second part of the question, EPA does not agree that it must conduct future rulemaking on TCM substitution. In approving the rule today as part of the Texas SIP, EPA finds that under the rule, all TCM substitutions will produce equivalent emission reductions and meet all TCM approval requirements or will be in violation of the approved SIP. The principal reasons for the TCM substitution process are to (1) allow MPOs flexibility in meeting emissions requirements, and (2) to encourage the inclusion of TCMs in the SIP. EPA will be engaged in this process to ensure TCM equivalency of any substitution. If EPA were to publish each TCM finding in the **Federal Register**, along with the presumed public comment period typical of such announcements, much of the intended benefits of a streamlined TCM substitution process would be lost. EPA believes that the State's requirements for a 30-day comment period and public hearing already provide ample opportunity for public involvement in the substitution process.

Comment 4: This comment states substitute TCM equivalency must be evaluated in units of emissions reductions, VMT reductions, and trip start reductions.

Response: As stated in the response to Comment 1, 30 TAC section 114.270(f)(1) (A) requires that a substitute TCM must provide for equivalent or greater emissions reductions than the TCM to be replaced. In addition 30 TAC section 114.270(f)(2) requires that the analysis of substitute TCMs must be consistent with the methodology used for evaluating TCMs

[3] 30 TAC section 114.270(f)(1)(A).

[4] 30 TAC section 114.270(f)(1)(D).

in the SIP, including the use of the latest emissions modeling techniques. EPA believes that these requirements will ensure that TCM equivalency will be adequately evaluated.

Comment 5: This comment states that any TCM substitution analysis and evaluation must include a comparative environmental and social justice impact process. An environmental justice representative should be a member of the working group.

Response: EPA fully supports Executive Order 12898, concerning environmental justice. In addition, the Federal Transit Administration and the Federal Highway Administration each have environmental justice policies, to which State Departments of Transportation that receive federal funds must adhere.

The Agency defines environmental justice to mean the fair treatment of people of all races, cultures, and incomes with respect to the development, implementation, and enforcement of environmental laws and policies, and their meaningful involvement in the decision making processes of the government.

EPA encourages the MPO, in the formation of the committee or working group that will evaluate possible substitute TCMs, (as required by 30 TAC sections 114.270(f)(3)) to include representatives from the portions of the community or communities affected by the TCM substitution and those concerned about environmental justice issues. EPA believes that since the public will have, as provided for by 30 TAC section 114.270(f)(5), a minimum of 30 days prior to the hearing to submit comments, and an opportunity to submit comments during the public hearing itself, ample opportunity for meaningful public involvement in the TCM substitution process will be provided.

Comment 6: This comment states the language concerning ''implementation date'' must be clarified. The initiation and full implementation of substitute TCMs should be undertaken in the same time frame as the original TCM. If this is not possible, the completion of the substitute TCM's full implementation should occur at the same time as the original TCM. If this is not possible, full implementation should occur as expeditiously as practicable. Any temporal loss of emissions reductions must be backfilled through ERC bank purchases or other offsetting emissions reductions to meet SIP timetables for emissions reductions.

Response: As required by 30 TAC sections 114.270(f)(1)(B) and 114.270(f)(1)(C), a substitute TCM must provide for implementation in the time frame established for the TCM in the SIP. If the implementation date has already passed, measures that require funding must be included in the first year of the next transportation improvement program and metropolitan transportation plan adopted by the MPO. Full implementation must occur not later than two years from the scheduled implementation date of the original TCM. EPA believes that these requirements will ensure that substitute TCMs are implemented as expeditiously as possible, therefore participation in an Emission Reduction Credit (ERC) bank is unnecessary.

Comment 7: This comment states that the enforceability of the substituted and substituting TCM is not evident from the rule. States cannot unilaterally amend their SIPs and rescind a TCM.

Response: Regarding the enforceability issue, 30 TAC section 114.270(f)(1)(D) requires that a substitute TCM must provide for evidence of adequate personnel, funding, and authority under state or local law to implement, monitor, and enforce the measures in order for the TCEQ to approve the substitute TCM. EPA believes that this will ensure that the substituted and substituting TCM will be adequately enforced. Additionally, both the EPA and citizens can take appropriate action for any violation of the approved SIP, which includes violations of the TCM substitution process under sections 113(a)(1), 113(a)(2), and 304 of the CAA. Regarding the second part of the comment, the purpose of the TCM substitution process is to allow substitutions, through an approval process that has been approved into the SIP, without having a separate federal SIP rulemaking. Also, the TCM substitution process is not unilateral, in that the TCEQ, EPA, the MPO, and the public are all involved, and the process has been approved into the SIP as providing for both equivalency in terms of emissions and enforceability of the substituted TCMs.

Comment 8: This comment states that EPA has not provided sufficient analysis of the legal authority to approve such a rule. The CAA requires all SIP measures to be enforceable at all times. The **Federal Register** notice lacks essential analysis of the proposed action.

A related comment states that the proposed action has national ramifications. While the benefits of flexibility in TCM implementation are significant, this must comport with the requirements of the CAA. As proposed, the rule fails to address enforceability and the issues noted above.

Response: EPA believes that a replicable procedure for enforceable TCM substitution is consistent with existing EPA SIP policy. As stated in the Direct Final Rule (66 FR 36921, July 16, 2001) neither the CAA nor the EPA rules require the State to develop, and submit as a SIP revision, a TCM rule. This evaluation is specifically based on the consistency of this rule with sections 110, 176, and 182 of the CAA. Based on this review, we have determined that the TCEQ's TCM rule provides adequate authority and procedures for implementation and substitution of TCMs in the designated nonattainment and maintenance areas including how equivalency is determined, public participation and EPA concurrence. The issue of enforceability is addressed in the response to Comment 7.

IV. What Is Our Final Action?

We are approving the Texas TCM rule which addresses the roles and responsibilities of the MPOs, implementing transportation agencies, and provides a method for substitution of the TCMs without a SIP revision in the nonattainment and maintenance areas. We have evaluated this SIP revision and have determined that the State's rules in TAC 30 Chapter 114 sections 114.5 and 114.270 provide adequate processes and procedures consistent with the CAA for implementing, tracking, and substitution of the TCMs, with equivalent control measures, which are used as a control strategy in the SIPs for attainment and maintenance of the NAAQS. The TCEQ conducted appropriate public participation during development and adoption of this rule at the local level.

V. What Administrative Requirements Apply for This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this

rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. 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).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 21, 2002.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart SS—Texas

2. The table in § 52.2270(c) entitled ''EPA Approved Regulations in the Texas SIP'' is amended:

a. Under Chapter 114, Subchapter A, by adding new section 114.5, Transportation Planning Definition, immediately following section 114.3;

b. Under Chapter 114, Subchapter G, by adding new section 114.270, Transportation Control Measures, immediately after Section 114.260.

3. The table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended by adding to the end of the table an entry for ''Transportation Control Measures SIP Revision.''

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal data	EPA approval date	Explanation
*	*	*	*	*
Chapter 114 (Reg 4)—Control of Air Pollution from Motor Vehicles				
Subchapter A—Definitions				
Section 114.5	Transportation Planning Definition	05/03/2000	12/5/02 and FR page cite.	
*	*	*	*	*
Subchapter G—Transportation Planning				

EPA APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal data	EPA approval date	Explanation
* * * * * * *				
Section 114.270	Transportation Control Measures	05/03/2000	12/5/02 and FR page cite.	
* * * * * * *				

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * * * *				
Transportation Control Measures SIP Revision.	All Nonattainment and Maintenance Areas.	05/09/2000	12/5/02 and FR page cite.	Chapter 1. Introduction, Chapter 2. General, and Chapter 3. Criteria and Procedures.

[FR Doc. 02–30764 Filed 12–4–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[Docket No. OST–1999–6189]

RIN 9991–AA31

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Administrator of the Maritime Administration his authority to enforce the prohibition of shipment of Government-impelled cargoes on vessels if: (1) The vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party. The authorities relating to this matter are vested in the Secretary of Transportation by 46 U.S.C. 2302(e)(2001), added by section 408(a) of Public Law 105–383, approved November 13, 1998 (112 Stat. 3411, 3430).

EFFECTIVE DATE: December 5, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Director, Office of Management and Information Services, Maritime Administration, MAR–310, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811.

SUPPLEMENTARY INFORMATION: The Secretary is delegating to the Maritime Administrator his authority to enforce the prohibition of shipment of Government-impelled cargoes on a vessel if: (1) The vessel has been detained and determined to be substandard by the Secretary for violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel; or (2) the operator of the vessel has on more than one occasion had a violation of an international safety convention to which the United States is a party, and the Secretary has published notice of that detention and determination in an electronic form, including the name of the owner of the vessel. The prohibition expires for a vessel on the earlier of (1) one year after the date of the publication in electronic form on which the prohibition is based; or (2) any date on which the owner or operator of the vessel prevails in an appeal of the violation of the relevant international convention on which the determination is based. The term ''Government-impelled cargo'' means cargo for which a Federal agency contracts directly for shipping by water or for which (or the freight of which) a Federal agency provides financing, including financing by grant, loan, or loan guarantee, resulting in shipment of the cargo by water. The authorities relating to this matter are vested in the Secretary of Transportation by 46 U.S.C. 2302(e)(2001), added by section 408(a) of Public Law 105–383, approved November 13, 1998 (112 Stat. 3411, 3430).

This amendment adds 49 CFR 1.66(ee) to reflect the Secretary's delegation of his authority to enforce the prohibition of shipment of Government-impelled cargoes on certain vessels to the Maritime Administrator. Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of the applicable laws and regulations covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

Regulatory Evaluation

Regulatory Assessment

This rulemaking is a non-significant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management

MOBILE6.2 Availability

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7663–6]

Official Release of the MOBILE6.2 Motor Vehicle Emissions Factor Model and the December 2003 AP–42 Methods for Re-Entrained Road Dust

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is approving and announcing the availability of the MOBILE6.2 motor vehicle emissions factor model for official use in particulate matter (PM_{10} and $PM_{2.5}$) SIPs and transportation conformity determinations outside of California. MOBILE6.2 is an update to MOBILE6 which adds the capability to estimate direct exhaust and brake and tire wear particulate matter emission factors for PM_{10} and $PM_{2.5}$, and exhaust emission factors for particulate precursors to the MOBILE6 model. MOBILE6.2 is a substantial improvement over previous methods for estimating PM emissions and incorporates EPA's most current estimates of PM emissions for use by state and local governments to meet Clean Air Act requirements.

EPA is also approving and announcing the availability of new methods for the estimation of re-entrained road dust emissions from cars, trucks, buses, and motorcycles on paved and unpaved roads for PM_{10} and $PM_{2.5}$ state implementation plans (SIPs) and transportation conformity analyses. These new methods are incorporated in the December 2003 edition of Chapter 13 of Compilation of Air Pollutant Emission Factors, AP–42, Fifth Edition, Volume I: Stationary Point and Area Sources.

Today's action also starts time periods after which MOBILE6.2 and the December 2003 AP–42 methods are required to be used in new transportation conformity analyses for PM_{10} emissions.

EPA strongly encourages areas to use the interagency consultation process to examine how MOBILE6.2 and the December 2003 AP–42 methods will affect future transportation conformity analyses, so, if necessary, PM_{10} SIPs and motor vehicle emissions budgets can be revised with MOBILE6.2 and AP–42 or transportation plans and programs can be revised as appropriate prior to the end of the conformity grace period.

DATES: EPA's approval of the MOBILE6.2 emissions factor model and December 2003 AP–42 methods for re-entrained road dust is effective May 19, 2004. See below for further information regarding how today's approval starts time periods after which MOBILE6.2 and the December 2003 AP–42 methods are required in new transportation conformity analyses and certain SIP and motor vehicle emissions budget revisions.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, please send an e-mail to EPA at *mobile@epa.gov* or contact EPA at (734) 214–4636 for technical model questions about MOBILE6.2. Please send an e-mail to EPA at *info.chief@epa.gov* or contact EPA at (919) 541–1000 for technical questions about the December 2003 AP–42 methods.

SUPPLEMENTARY INFORMATION:

Availability of Models and Support Materials

Copies of the official version of the MOBILE6.2 model are available on EPA's MOBILE Web site, *http://www.epa.gov/otaq/m6.htm.* The MOBILE Web site also contains the following support materials for implementing the new model: a detailed MOBILE6.2 User's Guide; EPA's ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity''; EPA's ''Technical Guidance on the Use of MOBILE6.2 for Emission Inventory Preparation''; and a list of Frequently Asked Questions about MOBILE6.2. EPA will continue to update this Web site in the future as other MOBILE6.2 support materials are developed.

Individuals who wish to receive EPA announcements related to the MOBILE model should subscribe to the EPA-MOBILENEWS e-mail listserver. To subscribe to the EPA-MOBILENEWS listserver, write the following in the body of the e-mail message:

subscribe EPA-MOBILENEWS FIRSTNAME LASTNAME where FIRSTNAME and LASTNAME is your name (for example: John Smith) and send the e-mail to the EPA Listserver at *listserver@unixmail.rtpnc.epa.gov.*

Your e-mail address will then be added to the list of subscribers and a confirmation message will be sent to your e-mail address. Whenever a message is posted to the EPA-MOBILENEWS listserver by the listserver owner (the Assessment and Standards Division of the EPA Office of Transportation and Air Quality), a copy of that message will be sent to every person who has subscribed.

You can remove yourself from the list by sending another message to the listserver address. This message must be sent from the same e-mail address that you used to subscribe, and should contain the message: unsubscribe EPA-MOBILENEWS.

Copies of the official version of the December 2003 edition of Sections 13.2.1 and 13.2.2 of AP–42 can be found at *www.epa.gov/ttn/chief/ap42/ch13/index.html.* In the rest of this document, unless otherwise indicated, ''AP–42'' refers to the December 2003 edition of Sections 13.2.1 and 13.2.2 of AP–42.

I. What Is MOBILE6.2 and How Is It Different From MOBILE6?

MOBILE is an EPA emissions factor model for estimating pollution from on-road motor vehicles in states outside of California. The model accounts for the emission impacts of factors such as changes in vehicle emission standards, changes in vehicle populations and activity, and variation in local conditions such as temperature, humidity, fuel quality, and air quality programs.

MOBILE is used to calculate current and future inventories of motor vehicle emissions at the national and local level. These inventories are used to make decisions about air pollution policies and programs at the local, state and national level. Inventories based on MOBILE are also used to meet the federal Clean Air Act's state implementation plan (SIP) and transportation conformity requirements.

The previous version of MOBILE, known as MOBILE6, calculated emissions of volatile organic compounds (VOCs), nitrogen oxides (NO_X) and carbon monoxide (CO) from passenger cars, motorcycles, buses, and light-duty and heavy-duty trucks. MOBILE6.2 is an update to MOBILE6 which adds the capability to estimate direct particulate matter (PM) emission factors for PM_{10} and $PM_{2.5}$, and emission factors for particulate precursors, to the original MOBILE6 model. In other words, MOBILE6.2 allows the estimation of emission factors for HC (and air toxics), NO_X, CO, gaseous SO_2, ammonia, and direct PM from vehicle exhaust and brake and tire wear. MOBILE6.2 also corrects some minor coding errors in the portion of the model code that estimates HC, NO_X, and CO emission factors, and it adds the capability of entering hourly relative humidity values. MOBILE6.2 also incorporates some revisions to CO emission factors for cars and light-duty trucks that meet national low emission vehicle (NLEV), low emission vehicle (LEV), and Tier 2 vehicle standards.

Functionally, MOBILE6.2 now replaces MOBILE6 as the highway vehicle emission factor model that EPA will maintain and support.

II. What Is the Impact of MOBILE6.2 on Ozone and CO SIPs and Conformity Determinations?

Although MOBILE6.2 includes some corrections and enhancements to parts of the model that estimate emissions of HC, NO_X, and CO, the impact of these changes is generally small. Even though MOBILE6.2 is very similar to MOBILE6 for these pollutants, states and local agencies outside of California should use MOBILE6.2 for future HC, NO_X, and CO SIPs and conformity analyses in order to take full advantage of the improvements incorporated in this version. SIPs and conformity analyses already in progress with MOBILE6 can be completed using MOBILE6 as determined through the interagency consultation process. Because the changes in HC, NO_X, and CO emissions in MOBILE6.2 are generally very small, the release of MOBILE6.2 does not start a new grace period before MOBILE6.2 is required to be used for all new transportation conformity analyses in ozone or CO nonattainment or maintenance areas and it does not trigger the need for any new ozone or CO SIP revisions.

III. What Are the December 2003 AP–42 Methods?

Motor vehicle emissions inventories for PM are comprised of four components: exhaust emissions, emissions from brake wear, emissions from tire wear, and re-entrained road dust. MOBILE6.2 does not include the capability of estimating the emissions of re-entrained road dust as the result of motor vehicle activity. EPA has developed separate revised AP–42 methodologies for estimating re-entrained road dust from paved and unpaved roads. These new methods for estimating road dust emission factors for paved and unpaved roads are being incorporated in EPA's document AP–42. These new AP–42 methodologies (AP–42, Sections 13.2.1, Paved Roads and 13.2.2, Unpaved Roads, each dated December 2003) replace previous methods for estimating re-entrained road dust emissions for these categories with some limitations. AP–42 is the approved method only for situations for which silt loading, mean vehicle weight, and mean vehicle speed fall within ranges given in AP–42 section 13.2.1.3 and with reasonably free-flowing traffic. For other conditions, areas may use an appropriate method approved by EPA on a case-by-case basis. In some areas, alternate methods may be more appropriate than AP–42 given specific local conditions even within the parameters given in AP–42 section 13.2.1.3. State and local agencies should consult with EPA for approval of alternative approaches. This policy is described in more detail in the document ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity'' (available at *http://www.epa.gov/otaq/models/mobile6/mobil6.2_letter.pdf).* The following discussion of the use of AP–42 in SIPs and conformity determinations also applies to approved alternatives to AP–42.

IV. PM_{10} SIP Policy for MOBILE6.2 and AP–42

EPA has articulated its policy regarding the use of MOBILE6.2 and AP–42 in PM_{10} SIP development in its ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity.'' Today's action highlights certain aspects of the guidance, but state and local governments should refer to the guidance for more detailed information on how and when to use MOBILE6.2 and AP–42 in attainment and maintenance PM_{10} SIPs, inventory updates, and other PM_{10} SIP submission requirements. See *Availability of Related SIP Policies* to obtain the MOBILE6.2 and AP–42 policy guidance.

PM_{10} SIPs that EPA has already approved are not typically required to be revised now that EPA has approved MOBILE6.2 and AP–42. Although MOBILE6.2 and AP–42 should be used in new PM_{10} SIP development as expeditiously as possible, EPA also recognizes the time and level of effort that States have already undertaken in PM_{10} SIP development with previous models or methods. States that have already submitted PM_{10} SIPs or will submit PM_{10} SIPs shortly after EPA's approval of MOBILE6.2 and AP–42 are not required to revise these SIPs simply because a new motor vehicle emissions model is now available. States can choose to use MOBILE6.2 in these SIPs, for example, if it is determined that future conformity determinations would be ensured through such a SIP revision. However, EPA does not believe that a State's use of an earlier model such as PART5 should be an obstacle to EPA approval for SIPs that have been or will soon be submitted, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.*, attainment modeling for an attainment SIP has already been completed with an earlier model). It would be unreasonable to require States to revise these SIPs with MOBILE6.2 and AP–42 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner.

States should use MOBILE6.2 and AP–42 where PM_{10} SIP development is in its initial stages or hasn't progressed far enough along that switching to MOBILE6.2 and AP–42 would create a significantly adverse impact on State resources. For example, PM_{10} SIPs that will be submitted late in 2004 should be based on MOBILE6.2 and AP–42 since there is adequate time to incorporate the new model's results. MOBILE6.2 and AP–42 should be incorporated into these SIPs since emissions estimates in these models are based on the best information currently available, as required by Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

V. PM_{10} Transportation Conformity Policy for MOBILE6.2 and AP–42

Transportation conformity is a Clean Air Act requirement to ensure that federally supported highway and transit activities are consistent with (''conform to'') the SIP. Conformity to a SIP means that a transportation activity will not cause or contribute to new air pollution violations; worsen existing violations; or delay timely attainment of federal air quality standards.

The transportation conformity rule (40 CFR part 93) requires that conformity analyses be based on the latest motor vehicle emissions model approved by EPA. Section 176(c)(1) of the Clean Air Act states that ''. * * * [t]he determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates * * *.'' When we approve new emissions models such as MOBILE6.2 and AP–42, a grace period is established before the models are required for conformity analyses. The conformity rule provides for a grace period for new emissions models of between 3–24 months.

EPA articulated its intentions for establishing the length of a conformity grace period in the preamble to the 1993 transportation conformity rule (58 FR 62211):

> ''EPA and [the Department of Transportation (DOT)] will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an

opportunity to revise their SIPs before MPOs must use the model's new emissions factors.''

In consultation with the DOT, EPA considers many factors in establishing the length of the grace period, including the degree of change in emissions models and the effects of the new model on the transportation planning process (40 CFR 93.111).

Upon consideration of all of these factors, EPA is establishing a 2-year grace period, which begins today and ends on May 19, 2006, before MOBILE6.2 and AP–42 are required for new PM_{10} conformity analyses in most cases. During this grace period, areas should use the interagency consultation process to examine how MOBILE6.2 and AP–42 will affect their future conformity determinations.

However, the grace period will be shorter than 2 years for PM_{10} if an area revises its SIP and budgets with MOBILE6.2 and AP–42 and such budgets become applicable for conformity purposes prior to the end of the 2-year grace period. For example, if an area revises a previously submitted (but not approved) PART5-based PM_{10} SIP with MOBILE6.2 and AP–42 and EPA finds the revised budgets adequate for conformity, such budgets would apply for conformity on the effective date of the **Federal Register** notice announcing EPA's adequacy finding.

During the grace period, areas can use earlier models such as PART5 for PM_{10} conformity determinations or choose to use MOBILE6.2 and AP–42 on a faster time frame. When the grace period ends on May 19, 2006, MOBILE6.2 will become the only approved motor vehicle emissions model for new PM_{10} transportation conformity analyses outside of California and AP–42 will become the approved method for estimating re-entrained road dust unless an alternate method is approved as described in section III above. In general, this means that all new PM_{10} conformity analyses started after the end of the 2-year grace period must be based on MOBILE6.2 and AP–42, even if the SIP is based on PART5. As discussed above, the grace period for new conformity analyses would be shorter for PM_{10} if an area revised its SIP and budgets with MOBILE6.2 and AP–42 and such budgets became applicable for conformity purposes prior to the end of the 2-year grace period. EPA strongly encourages areas to use the consultation process to examine how MOBILE6.2 and AP–42 will affect future conformity determinations, so, if necessary, PM_{10} SIPs and budgets can be revised with MOBILE6.2 and AP–42 or transportation plans and programs can be revised as appropriate prior to the end of the grace period.

Finally, the conformity rule provides some flexibility for analyses that are started before or during the grace period. Regional conformity analyses that began before the end of the grace period may continue to rely on earlier models such as PART5. Conformity determinations for transportation projects may also be based on an earlier model if the regional analysis was begun before the end of the grace period, and if the final environmental document for the project is issued no more than three years after the issuance of the draft environmental document (see 40 CFR 93.111(c)). The interagency consultation process should be used if it is unclear whether an analysis based on an earlier model was begun before the end of the grace period.

The release of MOBILE6.2 and AP–42 does not trigger the need for quantitative conformity hot-spot modeling to estimate concentrations of PM_{10} at this time. However, qualitative hot spot analyses are still required in PM_{10} nonattainment and maintenance areas.

VI. $PM_{2.5}$ SIP and Transportation Conformity Policy for MOBILE6.2 and AP–42

EPA has not yet finalized implementation policy for the $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS). However, when that policy is finalized and $PM_{2.5}$ nonattainment areas have been designated, MOBILE6.2 (except in California) and AP–42 (except in areas where another dust methodology has been approved) will be the approved models for estimating motor vehicle exhaust, brake and tire wear, and re-entrained road dust emissions in $PM_{2.5}$ SIPs and conformity determinations, until they are replaced by newer models or methods. No $PM_{2.5}$ SIPs have previously been done using other models and therefore, the release of MOBILE6.2 and AP–42 does not constitute a change in models which might result in inconsistencies between the SIP and transportation analyses. As a result, there is no need for a $PM_{2.5}$ conformity grace period for MOBILE6.2 and AP–42. MOBILE6.2 (except in California) and AP–42 (except in areas where another dust methodology has been approved) must be used in all $PM_{2.5}$ conformity analyses, until they are replaced by newer approved methods or models.

Dated: May 11, 2004.

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 04–11340 Filed 5–18–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0130; FRL–7359–1]

Indoxacarb; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues/combined residues of indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl) [4-(trifluoromethoxy) phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, and its R-enantiomer, (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoromethoxy) phenyl]amino]carbonyl]indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate, in or on cherry, sweet and cherry, tart. E.I. DuPont de Nemours and Company, DuPont Crop Protection requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The tolerance will expire on May 21, 2007.

DATES: This regulation is effective May 19, 2004. Objections and requests for hearings must be received on or before July 19, 2004.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket ID number OPP–2004–0130. 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., 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 Public Information and Records Integrity Branch (PIRIB), Rm.

Conformity Rule Amendments

Federal Register

Thursday,
July 1, 2004

Part II

Environmental Protection Agency

40 CFR Part 93

Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[FRL–7774–6]

RIN 2060–AL73; 2060–AI56

Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today we (EPA) are amending the transportation conformity rule to finalize several provisions that were proposed last year. First, today's final rule includes criteria and procedures for the new 8-hour ozone and fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards''). Transportation conformity is required under Clean Air Act section 176(c) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of a state air quality implementation plan (SIP). We are conducting this rulemaking in part to revise the conformity regulation in the context of EPA's broader strategies for implementing the new ozone and $PM_{2.5}$ standards.

The final rule also addresses a March 2, 1999 ruling by the U.S. Court of Appeals for the District of Columbia Circuit (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999). This final rule incorporates into the transportation conformity rule the EPA and Department of Transportation (DOT) guidance that has been used in place of certain regulatory provisions of the rule since the court decision.

DOT is EPA's federal partner in implementing the transportation conformity regulation. We have consulted with DOT on the development of this rulemaking, and DOT concurs with this final rule.

EPA notes that a supplemental notice of proposed rulemaking will be published in the near future to request additional comment on options related to $PM_{2.5}$ and PM_{10} hot-spot requirements. EPA is also not finalizing at this time any requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations for $PM_{2.5}$ nonattainment and maintenance areas. EPA is considering the transportation conformity rule's $PM_{2.5}$ precursor requirements in the context of EPA's broader $PM_{2.5}$ implementation strategy. All of these issues will be addressed in a separate final rule to be issued before $PM_{2.5}$ designations become effective.

EFFECTIVE DATE: August 2, 2004.

ADDRESSES: Materials relevant to this rulemaking for the November 5, 2003 proposal (68 FR 62690) are in Public Docket I.D. No. OAR–2003–0049. Materials relevant to this rulemaking for the June 30, 2003 proposal (68 FR 38974) are in Public Docket I.D. No. OAR–2003–0063. For more information about accessing information from the docket, see Section I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Meg Patulski, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *patulski.meg@epa.gov*, (734) 214–4842; Rudy Kapichak, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *kapichak.rudolph@epa.gov*, (734) 214–4574; or Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 2000 Traverwood Road, Ann Arbor, MI 48105, *berry.laura@epa.gov*, (734) 214–4858.

SUPPLEMENTARY INFORMATION:

The contents of this preamble are listed in the following outline:

I. General Information

A. Regulated Entities

Entities potentially regulated by the conformity rule are those that adopt, approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government.	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government.	State transportation and air quality agencies.
Federal government.	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this final rule. This table lists the types of entities of which EPA is aware that potentially could be regulated by the conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in § 93.102 of the transportation conformity rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of This Document?

1. Docket. EPA has established official public dockets for today's final rule. Materials relevant to this rulemaking for the November 5, 2003 proposal (68 FR 62690) are in Public Docket I.D. No. OAR–2003–0049. Materials relevant to this rulemaking for the June 30, 2003 proposal (68 FR 38974) are in Public Docket I.D. No. OAR–2003–0063. The

official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Docket telephone number is (202) 566–1742. The EPA Docket Center 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. You may have to pay a reasonable fee for copying docket materials.

2. Electronic Access. You may access this **Federal Register** document electronically through EPA's transportation conformity Web site at *http://www.epa.gov/otaq/transp/traqconf.htm*. You may also access this document electronically under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.B.1. Once in the EPA electronic docket system, select ''search,'' then key in the appropriate docket identification number.

II. Background on the Transportation Conformity Rule

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Conformity currently applies under EPA's rules to areas that are designated nonattainment, and those redesignated to attainment after 1990 (''maintenance areas'' with plans developed under Clean Air Act section 175A) for the criteria pollutants: ozone, particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}), carbon monoxide (CO), and nitrogen dioxide (NO_2). Today's final rule also applies the conformity rule provisions in fine particulate matter ($PM_{2.5}$) areas. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS or ''standards''). EPA's transportation conformity rule establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published a comprehensive set of amendments on August 15, 1997 (62 FR 43780) that clarified and streamlined language from the 1993 rule. EPA has made other smaller amendments to the rule both before and after the 1997 amendments.

Today's final rule includes provisions from two proposals that were published on June 30, 2003 and November 5, 2003, as described below. EPA has consulted with the Department of Transportation (DOT), our federal partner in implementing the transportation conformity regulation, in developing all aspects of this rulemaking, and DOT concurs with this final rule.

B. What Did EPA Propose on June 30, 2003 and Why?

Today's final rule incorporates existing federal guidance into the conformity regulation consistent with a previous court decision. A decision made on March 2, 1999, by the U.S. Court of Appeals for the District of Columbia Circuit affected several provisions of the August 15, 1997 rulemaking (*Environmental Defense Fund* v. *EPA, et al.*, 167 F. 3d 641, D.C. Cir. 1999; hereinafter referred to as the ''court decision''). Specifically, the court's ruling affected provisions that pertain to five aspects of the conformity rule, including:

(1) Federal approval and funding of transportation projects in areas without a currently conforming transportation plan and transportation improvement program (TIP);

(2) Provisions allowing motor vehicle emissions budgets from submitted SIPs to be used in transportation conformity determinations before the SIP has been approved;

(3) The adoption and approval of non-federal transportation projects in areas without a currently conforming transportation plan and TIP;

(4) The timing of conformity consequences following an EPA disapproval of a control strategy SIP (*e.g.*, reasonable further progress SIPs and attainment demonstrations) without a protective finding; and,

(5) The use of submitted safety margins in areas with approved SIPs that were submitted prior to November 24, 1993.

In response to the court decision, the EPA and DOT issued guidance [1] to address the provisions directly affected by the court decision. DOT also issued guidance on May 20, 2003, to clarify the conformity requirements as they relate to FHWA/FTA projects that require environmental impact statements.[2] In addition, FTA issued guidance on April 9, 2003, that further clarified which approvals are necessary for transit projects to proceed during a conformity lapse.[3] EPA and DOT consulted on the development of all of the guidance documents that were issued to implement the court decision.

This final rule incorporates all of these guidance documents, as proposed in EPA's June 30, 2003 rulemaking entitled, ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (68 FR 38974). EPA notes that although guidance implementing the court decision will still apply upon the effective date of this final rule, aspects of these guidance documents that are specifically addressed in this rulemaking will be governed by the

[1] May 14, 1999, Memorandum from Gay MacGregor, then-Director of the Regional and State Programs Division of EPA's Office of Transportation and Air Quality, to Regional Air Division Directors, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision''; January 2, 2002, Memorandum from Mary E. Peters, Administrator, Federal Highway Administration (FHWA), and Jennifer L. Dorn, Administrator, Federal Transit Administration (FTA), to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, ''Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity''; February 7, 2002, Notice, Issuance of Revised Guidance for Implementing the March 1999 Circuit Court Decision Affecting Transportation Conformity, **Federal Register**, 67 FR 5882.

[2] May 20, 2003, Memorandum from James M. Shrouds, Director, Office of Natural and Human Environment, FHWA, and Susan Borinsky, Director, Office of Human and Natural Environment, FTA, to FHWA Division Administrators, Federal Lands Highway Division Engineers, and FTA Regional Administrators, ''INFORMATION: Clarification of Transportation Conformity Requirements for FHWA/FTA Projects Requiring Environmental Impact Statements.''

[3] April 9, 2003, Memorandum from Jennifer L. Dorn, Administrator, FTA, to Regional Administrators, Regions 1–10, ''INFORMATION: Revised FTA Procedures for a Conformity Lapse.''

federal conformity rules when they become effective. In addition to issues affected by the court, the June 30, 2003 proposal and today's final rule include several amendments to other provisions of the conformity regulations. These amendments are aimed at improving the implementation of the conformity program.

The June 30, 2003 proposal and the comments received on that proposal serve as the basis for related provisions of today's final rule. The public comment period for the proposed rule ended on July 30, 2003. EPA received 25 sets of public comments on the proposed rule from MPOs; state and local transportation and air quality agencies; and, environmental, transportation and construction industry advocacy groups. Today's final rule makes several minor changes to the June 30, 2003 proposed rule in response to these stakeholder comments. The changes from the June 30, 2003 proposal and EPA's rationale for these changes are stated below. EPA has not, however, restated in this final rule background information and our complete rationale for many of the revisions to the conformity rule that are identical to the June 2003 proposal. The reader is referred to the proposal for such discussions. A copy of the proposal can be downloaded from EPA's transportation conformity website listed in Section I.B.2. of today's rulemaking.

C. What Did EPA Propose on November 5, 2003 and Why?

This final rule is also based on the November 5, 2003 proposed rule entitled, ''Transportation Conformity Rule Amendments for the New 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas'' (68 FR 62690), and the comments received on that proposal. The public comment period for this proposal ended on December 22, 2003. EPA held one public hearing for this proposal on December 4, 2003. EPA received over 110 sets of public comments on the proposed rule from MPOs, state and local transportation and air quality agencies, and environmental and transportation advocacy groups. EPA also received over 11,000 similar comments on the proposal from public citizens from a mass e-mail campaign. Today's final rule promulgates proposed options and rule revisions in response to these stakeholder comments. This preamble explains EPA's rationale for the selection of certain proposed options described in the November 2003 proposal. A copy of the November 2003 proposal can be downloaded from EPA's transportation conformity website listed in Section I.B.2. of today's rulemaking.

EPA's nonattainment area designations for the new 8-hour ozone standard are effective on June 15, 2004 for most areas, and EPA anticipates designating areas for the new $PM_{2.5}$ air quality standard in November or December 2004. EPA is conducting this rulemaking to provide clear guidance and rules for implementing conformity for these standards. Some of the conformity rule revisions in this rulemaking will provide more options and flexibility in demonstrating conformity. Other changes apply to existing 1-hour ozone, CO, PM_{10} and NO_2 nonattainment and maintenance areas.

EPA notes that today's action does not finalize new transportation conformity requirements for $PM_{2.5}$ precursors and $PM_{2.5}$ hot-spot analyses, or make changes to existing PM_{10} hot-spot analysis requirements. EPA is considering requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations in the context of EPA's broader $PM_{2.5}$ implementation strategy. EPA will soon be publishing a supplemental notice of proposed rulemaking to request additional comment on options related to $PM_{2.5}$ and PM_{10} hot-spot requirements. $PM_{2.5}$ precursors and $PM_{2.5}/PM_{10}$ hot-spot analysis requirements will be addressed in a separate final rule to be issued before $PM_{2.5}$ designations become effective. See Sections VIII., XII., and XIII. for further information on these topics.

Other changes to the conformity program could occur in the future through the reauthorization of the Transportation Equity Act for the 21st Century (TEA–21), which authorizes federal surface transportation programs. EPA will continue to monitor the proposed reauthorization proposals for their potential impact on the conformity regulation. If statutory amendments to the conformity program result from TEA–21 reauthorization, EPA would take appropriate action to address such changes in the future.

D. What Parts of the Final Rule Apply to Me?

The following table provides a roadmap for determining whether a specific final rule revision included in this rulemaking would apply in your area. This table illustrates which parts of the final rule are relevant for various pollutants and standards. Please note that Sections V.–VII. provide stand-alone descriptions of the regional emissions tests that will apply in $PM_{2.5}$ areas and 8-hour ozone areas with and without existing 1-hour ozone SIPs. For example, if your area expects only to be designated nonattainment under the $PM_{2.5}$ standard, you should read Section VII. but not Sections V. and VI. (for 8-hour ozone areas). EPA believes that any redundancy between these sections is warranted to assist readers that may not need to read the entire final rule.[4]

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
8-hour ozone	Conformity grace period	III.A.	§ 93.102(d).
	Revocation of 1-hour ozone standard	III.B.	Not applicable.
	General implementation of new standards	III.C.	Not applicable.
	Early Action Compacts	III.D.	Not applicable.
	Baseline year test	IV.B.	§ 93.119(b).
	Build/no-build test (marginal classification and subpart 1 areas [4])	IV.C.	§ 93.119(b)(2); § 93.119(g)(2).
	Regional conformity tests (moderate and above classifications)	IV.D.	§ 93.119(b)(1).
	Regional conformity tests (areas without 1-hour ozone budgets)	V.	§ 93.109(d).
	Regional conformity tests (areas with 1-hour ozone budgets)	VI.	§ 93.109(e).
	Definitions	XIV.A.	§ 93.101.
	Insignificance	XIV.B.	§ 93.109(k); § 93.121(c).

[4] ''Subpart 1 areas'' are areas that are designated nonattainment under subpart 1 of part D of title 1 of the Clean Air Act. EPA also referred to these areas as ''basic'' nonattainment areas in its April 30, 2004 final designations rule for the 8-hour ozone standard (69 FR 23862).

Type of area	Issue addressed in final rule	Preamble section	Regulatory section
	Transportation plan and modeling requirements (moderate and above classifications) ...	XIV.D.	§ 93.106(b); § 93.122(c).
	Non-federal projects (for isolated rural areas only) ...	XIV.F.	§ 93.121(b)(1).
$PM_{2.5}$ ...	Applicability ...	III.A.	§ 93.102(b)(1).
	Conformity grace period ...	III.A.	§ 93.102(d).
	Baseline year test ...	IV.B.	§ 93.119(e).
	Build/no-build test ...	IV.C.	§ 93.119(e); § 93.119(g)(2).
	Regional conformity tests ...	VII.	§ 93.109(i).
	Precursors in regional analyses ...	VIII.	No regulatory text being finalized.
	Re-entrained road dust in regional analyses ...	IX.	§ 93.102(b)(3); § 93.119(f).
	Construction-related fugitive dust in regional analyses ...	X.	§ 93.122(f).
	Compliance with SIP control measures ...	XI.	§ 93.117.
	Hot-spots ...	XII.	No regulatory text being finalized.
	Definitions ...	XIV.A.	§ 93.101.
	Insignificance ...	XIV.B.	§ 93.109(k); § 93.121(c).
	Non-federal projects (for isolated rural areas only) ...	XIV.F.	§ 93.121(b)(1).
1-hour ozone	Revocation of 1-hour ozone standard ...	III.B.	No proposed regulatory amendments.
	Build/no-build test (marginal and below classifications) ...	IV.C.	§ 93.119(b)(2); § 93.119(g)(2).
	Regional conformity tests (moderate and above classifications) ...	IV.D.	§ 93.119(b)(1).
	Definitions ...	XIV.A.	§ 93.101.
	Insignificance ...	XIV.B.	§ 93.109(k); § 93.121(c).
	Limited maintenance plans ...	XIV.C.	§ 93.101; § 93.109(j); § 93.121(c).
	Transportation plan and modeling requirements (moderate and above classifications) ...	XIV.D.	§ 93.106(b); § 93.122(c).
	Non-federal projects (for isolated rural areas only) ...	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity ...	XIV.G.	§ 93.109(c).
PM_{10} ...	Build/no-build test ...	IV.C.	§ 93.119(d); § 93.119(g)(2).
	Compliance with SIP control measures (Request for information only) ...	XI.	No proposed regulatory amendments.
	Hot-spots ...	XIII.	No regulatory text being finalized.
	Clarification to Precursors ...	XIV.E.	§ 93.102(b)(2); § 93.119(f)(5).
	Definitions ...	XIV.A.	§ 93.101.
	Insignificance ...	XIV.B.	§ 93.109(k); § 93.121(c).
	Limited maintenance plans ...	XIV.C.	§ 93.101; § 93.109(j); § 93.121(c).
	Non-federal projects (for isolated rural areas only) ...	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity ...	XIV.G.	§ 93.109(g).
CO ...	Build/no-build test (lower CO classifications) ...	IV.C.	§ 93.119(c); § 93.119(g)(2).
	Regional conformity tests (higher CO classifications) ...	IV.D.	§ 93.119(c)(1).
	Definitions ...	XIV.A.	§ 93.101.
	Insignificance ...	XIV.B.	§ 93.109(k); § 93.121(c).
	Limited maintenance plans ...	XIV.C.	§ 93.101; § 93.109(j); § 93.121(c).
	Transportation plan and modeling requirements (moderate and serious classifications)	XIV.D.	§ 93.106(b); § 93.122(c).
	Non-federal projects (for isolated rural areas only) ...	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity ...	XIV.G.	§ 93.109(f).
NO_2 ...	Build/no-build test ...	IV.C.	§ 93.119(d); § 93.119(g)(2).
	Definitions ...	XIV.A.	§ 93.101.
	Insignificance ...	XIV.B.	§ 93.109(k); § 93.121(c).
	Non-federal projects (for isolated rural areas only) ...	XIV.F.	§ 93.121(b)(1).
	Clarification to use of approved budgets in conformity ...	XIV.G.	§ 93.109(h).

E. Does This Final Rule Include the Entire Transportation Conformity Regulation?

No. The regulatory text in this final rule is limited to changes to affected portions of the conformity rule. However, a complete version of the conformity rule is available to the public on our transportation conformity website listed in Section I.B.2. of this rulemaking. The complete version is intended to help reviewers understand today's final rule in context with other existing rule sections that are not being changed.

III. Conformity Grace Period and Revocation of the 1-hour Ozone Standard

A. When Will Conformity Apply for the 8-hour Ozone and $PM_{2.5}$ Standards?

1. Description of Final Rule

Conformity applies one year after the effective date of EPA's initial nonattainment designation for a given pollutant and standard. This one-year conformity grace period is provided by Clean Air Act section 176(c)(6) and § 93.102(d) of the conformity regulation. This final rule adds $PM_{2.5}$ to § 93.102(d) of the conformity rule even though the grace period is already available to all newly designated nonattainment areas as a matter of law.

Since the 1-hour and 8-hour ozone standards are different NAAQS, every area that was designated nonattainment for the 8-hour ozone standard has a one-year grace period before conformity applies for that standard even if the area was previously designated nonattainment for the 1-hour ozone standard. Areas subject to conformity for the 1-hour ozone standard continue to be subject to all applicable Clean Air Act requirements during the 1-year conformity grace period for the 8-hour ozone standard, as described in B. of this section. EPA designated areas for the 8-hour ozone standard on April 15, 2004, and published the final designations rule on April 30, 2004 (69 FR 23858). Designations for most of these 8-hour areas will be effective on June 15, 2004. Therefore, conformity for the 8-hour ozone standard will begin to apply on June 15, 2005 in most areas.

When conformity is done for the 1-hour standard during the grace period for the 8-hour standard, areas should consider whether demonstrating conformity for the 1-hour and 8-hour ozone standards at the same time is possible or advantageous. For example, if a conformity determination is made in September 2004 for a new or revised transportation plan and/or TIP, an area would demonstrate conformity for the 1-hour ozone standard and may choose to address the 8-hour ozone standard at a later date near the end of the one-year grace period, if conformity analyses for the 8-hour standard are not yet completed. In contrast, if a conformity determination is made in January 2005 for a new or revised plan/TIP, an area may be able to complete all the necessary work to demonstrate conformity for both ozone standards at that time. If no new or revised plan/TIP is required during the one-year grace period, conformity could be determined for the 8-hour standard without also making a conformity determination for the 1-hour standard. Whatever the case, a conformity determination for the 8-hour standard must be in place on June 15, 2005 for the plan and TIP, or an area will lapse.

Areas should use the interagency consultation process to determine a schedule for conducting regional emissions analyses and demonstrating conformity for the 1-hour and 8-hour ozone standards during the one-year conformity grace period as appropriate. Areas can rely on similar analyses and other work for conformity determinations for existing and new standards, to the extent that such work meets applicable requirements.

EPA plans to designate areas for $PM_{2.5}$ by November or December of 2004. Similarly, every area that is designated nonattainment for the $PM_{2.5}$ standard will have a one-year grace period from the effective date of designations before conformity applies for that standard. It is important to note that PM_{10} is a different pollutant than $PM_{2.5}$, and today's final rule does not affect the applicability and continued general implementation of conformity in PM_{10} nonattainment and maintenance areas.

EPA anticipates that some areas will be designated as nonattainment for both the 8-hour ozone and $PM_{2.5}$ standards. In these areas, conformity for the 8-hour ozone standard will apply one year after the effective date of the area's 8-hour ozone designation, while conformity for $PM_{2.5}$ will apply one year after the effective date of the area's $PM_{2.5}$ designation.

As described in the November 5, 2003 proposal, if upon the expiration of the one-year grace period, a metropolitan area does not have a transportation plan and TIP that conform to the applicable standard in place, the conformity status of the area ''lapses.'' Likewise, within one year after the effective date of an area's initial nonattainment designation, the existing and planned transportation network for any donut [5] portion of an area (as well as for the metropolitan portion of the area) must demonstrate conformity, or conformity of the metropolitan transportation plan and TIP will lapse, and the entire nonattainment area will be unable to obtain additional non-exempt project funding and approvals at that time. During a conformity lapse funding and approval of transportation projects are restricted and only limited types of projects can proceed (*e.g.*, safety projects, project phases that were approved before the lapse).

The November 2003 proposal also stated that the one-year conformity grace period applies in isolated rural nonattainment areas.[6] However, conformity determinations in isolated rural areas are required only when a non-exempt FHWA/FTA project needs funding or approval. Therefore, once the conformity grace period has expired, a conformity determination will only be required in such areas the next time a non-exempt project needs funding or approval.

For more information on the application of the conformity grace period in metropolitan, donut and isolated rural nonattainment areas, see the November 5, 2003 proposal to this final rule (68 FR 62695–62696). See Section III.C. below for guidance and EPA's responses to comments regarding implementation of the one-year grace period and conformity determinations under the new standards.

2. Rationale and Response to Comments

EPA received a number of comments on the one-year conformity grace period and the transition from the 1-hour ozone standard to the 8-hour ozone standard. Most commenters supported the one-year conformity grace period, with some commenters stating that the grace period makes sense and will provide state and local agencies with the time needed to prepare for conformity under the new standards. Another commenter supported the grace period as a means to prevent having to demonstrate conformity to two ozone standards simultaneously.

[5] As defined in § 93.101 of today's final rule, donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

[6] As defined in § 93.101 of today's final rule, isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. These areas are not donut areas.

Some commenters, however, believed that the one-year grace period would not allow enough time for some areas to meet the conformity requirements. One of these commenters questioned whether a year would be enough time to implement the interagency consultation process in brand new nonattainment areas or in existing nonattainment and maintenance areas that change in size or complexity. A few other commenters argued that the one-year grace period does not provide adequate time for new MPOs to become familiar with the conformity process or for existing MPOs to complete technical documentation and the public and adoption processes in nonattainment counties that are not within the MPO's jurisdiction (*i.e.*, donut areas).

To address these concerns, a few commenters suggested approaches for lengthening the conformity grace period. One commenter that was concerned about the lack of experience and resource burden on new and rural nonattainment areas requested that the grace period be extended to two years for these areas. Another commenter suggested that EPA provide a longer 60-day effective date for nonattainment designations, effectively giving areas two additional months before the conformity requirements apply.

EPA understands that some areas, including brand new metropolitan areas, donut areas, and complex nonattainment areas (*e.g.*, areas with multiple states and/or multiple MPOs) may have additional challenges in conducting the conformity process. However, the Clean Air Act, as amended on October 27, 2000, specifically provides newly designated nonattainment areas with only a one-year grace period, after which conformity applies as a matter of law under the statute. Therefore, we believe that the statutory language precludes EPA from extending the conformity grace period beyond one year for new nonattainment areas. We emphasize, however, that EPA issued letters to the states effectively notifying areas of their proposed 8-hour ozone nonattainment designation in December 2003 and that states submitted their recommendations for nonattainment areas based on monitored data, well before designations became effective.[7] In addition, state and local agencies of potential nonattainment areas have been involved early on in the 8-hour designation process. These new ozone nonattainment areas have already had additional time ahead of the one-year grace period to begin developing consultation procedures, modeling tools and data collections efforts for implementing the conformity regulation. EPA anticipates that areas designated nonattainment under the $PM_{2.5}$ standard will have similar advance notice of their pending designations, since state recommendations were due February 15, 2004, and many areas already expect that they will be designated nonattainment for $PM_{2.5}$.

The amount of time between the publication and effective dates of an action is established by EPA on a case-by-case basis for each rulemaking. We generally believe that the time needed for states to implement obligations for the NAAQS is fully considered in the statutory or regulatory provision establishing the compliance timeframe and that the effective date of the designations should not be used as a method for adjusting the compliance timeframes. In the context of promulgating the 8-hour ozone designations, EPA determined that it was appropriate to make the designations effective on June 15, 2004, approximately 45 days following the publication date of the designations. EPA will consider the appropriate effective date for $PM_{2.5}$ designations at the time it promulgates those designations.

EPA notes that Section III.C. of today's final rule includes guidance on general and specific questions raised by commenters for implementing the new standards. In addition, EPA will release guidance on specific implementation issues that may arise in some of the different types of new nonattainment areas (*e.g.*, multi-state and/or multiple MPO areas). We will provide this information in response to requests for clarification raised during the public comment period for this rulemaking. Newly designated nonattainment areas should also consult with their respective EPA regional and DOT division offices for additional guidance and assistance in meeting the conformity requirements within the one-year grace period. In addition, EPA and DOT will be conducting training sessions for the new standards conformity rulemaking in the near future that state and local agencies can attend; areas can also take advantage of existing EPA and DOT conformity[8] and emissions modeling[9] training that is currently available.

B. When Does Conformity Stop Applying for the 1-hour Ozone Standard?

1. Description of Final Rule

Conformity for the 1-hour ozone standard will no longer apply in existing 1-hour ozone nonattainment and maintenance areas once that standard and corresponding designations are revoked. Today's final conformity rule and responses to comments with respect to this issue are consistent with EPA's April 30, 2004, 8-hour ozone implementation final rule that revokes the 1-hour standard one year after the effective date of EPA's 8-hour designations (69 FR 23951).

Current 1-hour nonattainment and maintenance areas will continue to ensure that transportation activities conform to the existing 1-hour standard, including any applicable existing adequate or approved 1-hour SIP budgets, until that standard is revoked. When the 1-hour standard is revoked, conformity will no longer apply for either ozone standard in areas that are attaining the 8-hour ozone standard. Section 93.109(c) of today's final rule addresses conformity requirements for the 1-hour ozone standard. See EPA's April 30, 2004, 8-hour implementation final rule for more discussion on the revocation of the 1-hour ozone standard (69 FR 23951).

2. Rationale and Response to Comments

Many commenters supported the revocation of the 1-hour ozone standard at the time conformity applies for the 8-hour ozone standard. Several commenters believed that requiring conformity for both ozone standards at the same time would be overly burdensome and confusing, and would significantly impact state and local resources and the transportation sector. These commenters supported a final rule that focused on attainment of the 8-hour standard, rather than created duplicative conformity requirements for two ozone standards. One commenter also argued that requiring conformity for both ozone standards at the same time could undermine progress to achieve

[7] Information on 8-hour ozone nonattainment designations, including copies of EPA's December 2003 designation letters, can be accessed from EPA's Web site at *http://www.epa.gov/air/oaqps/glo/designations/index.htm.*

[8] The National Transit Institute offers a course entitled, ''Introduction to Transportation/Air Quality Conformity.'' This course was developed by FTA, FHWA and EPA and is designed for federal, state and local agencies involved in the conformity process. In addition, the National Highway Institute offers a course entitled, ''Estimating Regional Mobile Source Emissions.''

[9] EPA and DOT jointly sponsored seven MOBILE6 training courses across the country in 2002. The training materials for these courses are on EPA's MOBILE6 website and can be downloaded at: *http://www.epa.gov/otaq/m6.htm.* Other training materials prepared by EPA are also available on this website.

adequate emission reductions, since new nonattainment areas may have to develop different control strategies for attaining the 8-hour ozone standard. This commenter believed that such a result could leave nonattainment areas extremely vulnerable to litigation. Some commenters stated that EPA's proposal is logical, since the 8-hour ozone standard is presumably a more stringent standard than the 1-hour standard.

However, other commenters believed EPA's proposal to revoke the 1-hour standard is unlawful because they believed it would allow large increases in motor vehicle emissions and thus violate the statutory conformity tests. Other commenters stated that if the 1-hour standard was revoked, areas would no longer have to meet the SIP motor vehicle emissions budgets (''budgets'') established for that standard. These commenters were concerned that 8-hour nonattainment areas that were nonattainment or maintenance for the 1-hour standard would be able to determine conformity using less protective conformity tests, such as the build/no-build test, during the time period before new 8-hour SIP budgets are established. These commenters stated that not using existing 1-hour SIP budgets would lead to emissions increases that would later need to be offset by future controls for the 8-hour standard. Commenters also believed that using 1-hour ozone SIP budgets would support current air quality progress and ensure that attainment of the 8-hour standard is not delayed.

As stated in the final 8-hour implementation rule (69 FR 23951) and corresponding response to comments document, EPA disagrees that revoking the 1-hour standard is unlawful. Congress gave EPA the authority to create and revise the NAAQS. In Clean Air Act section 109(d)(1), Congress directed EPA to review the standards every five years and ''make such revisions in such criteria and standards and promulgate such new standards * * *.'' EPA interprets ''make such revisions in * * * standards'' to mean that EPA has the authority to replace one standard with another. EPA does not believe that Congress intended to have overlapping standards every five years for the same pollutant. If that were the case, states would be required to develop and implement a SIP for each version of the standard. Duplicating these efforts would waste limited resources because the goal of each standard is the same: to protect public health and welfare. EPA promulgated the 8-hour standard in response to the latest data and science regarding ozone, and has determined that the 8-hour ozone standard is more protective of public health and welfare. EPA has made the decision to replace the 1-hour standard with the 8-hour standard, because it may be difficult for states to plan for both standards and because EPA concludes that the 8-hour standard is the more appropriate standard.

Implicit in the authority to revise standards is the authority to revoke a standard. The U.S. Supreme Court's ruling (531 U.S. 547 (2001)) in a challenge against EPA's 1997 8-hour ozone implementation strategy certainly did not state otherwise. EPA needs to be able to revoke standards so that states and areas can move on to implementing the new standard and not have to implement old standards in perpetuity. Finally, since the 8-hour standard is the more stringent of the two standards, EPA believes conforming to that standard will be sufficient, as noted by several commenters.

As stated in the April 30, 2004 final 8-hour implementation rule (69 FR 23969), EPA believes it is sufficient that conformity be determined for one ozone standard at a time. EPA concludes that focusing conformity requirements on one ozone standard at a time will meet Clean Air Act conformity requirements and use limited state and local resources in an efficient manner.

However, EPA agrees that the continued use of existing approved or adequate 1-hour SIP budgets is important for meeting 8-hour conformity requirements before new 8-hour SIPs are established. Section VI. of this final rule provides further information regarding conformity requirements and EPA's rationale for such requirements in 8-hour ozone areas that have existing 1-hour SIP budgets.

One commenter supported EPA's proposal to revoke the 1-hour standard for areas that are found to be in attainment of the new 8-hour standard. Based on air quality data and significant reductions from federal and state measures that will continue to remain in place, this commenter believed that revoking the 1-hour standard in the commenter's specific area would not impact ozone emissions.

However, two other commenters opposed eliminating conformity in 1-hour ozone nonattainment and maintenance areas that were not designated nonattainment for the 8-hour standard. One of these commenters argued that conformity under the 1-hour maintenance plan helped prevent 8-hour violations, and urged EPA to work with these areas to find an acceptable mechanism to allow those areas that wish to retain conformity as a preventative measure. The other commenter believed that all areas that are covered by one of the ozone standards must continue or start to provide for clean air; the conformity process is a mechanism to accomplish this goal.

Conformity cannot apply in 1-hour maintenance areas once the standard is revoked. The Clean Air Act specifically states that conformity applies only in ''a nonattainment area* * *'' and ''an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title* * *'' (42 U.S.C. 7506(5)). Clean Air Act section 176(c)(5) restricts conformity to nonattainment areas and areas that are required to submit maintenance plans under section 175A; in these areas, the Federal government's sovereign immunity is waived so that DOT can be required to make conformity determinations.[10] However, after revocation of the 1-hour standard, the areas previously required to submit section 175A maintenance plans under the statute for the 1-hour standard will no longer be required to do so. Thus, conformity can no longer be required in 1-hour maintenance areas, since the Clean Air Act limits conformity to areas that are required to submit section 175A maintenance plans and no longer waives the Federal government's sovereign immunity for these areas after revocation.

EPA acknowledged in the June 2, 2003 proposed 8-hour implementation rule (68 FR 32818–32825) that our interpretation that conformity would not apply in 1-hour maintenance areas differs from the approach taken in 1997. In 1997, EPA interpreted revoking the 1-hour standard to mean that conformity would not apply for the 1-hour standard in areas that were nonattainment for the 1-hour standard, but that conformity would continue to apply for the 1-hour standard in areas with a maintenance plan. This interpretation led to an unfair and counter-intuitive result: areas that had attained the standard and had made the effort to establish a maintenance plan would have to continue a required

[10] The concept of sovereign immunity specifies that the federal government can only be subjected to regulation to the extent it voluntarily agrees to become subject. With respect to conformity, in the Clean Air Act, Congress has agreed that the federal government should be subject only one year after designation in areas designated nonattainment or previously designated nonattainment and redesignated to attainment subject to a 175A maintenance plan. Thus, sovereign immunity prevents the mandatory application of conformity requirements either prior to a year after designation or after revocation with respect to a given air quality standard.

program, but areas that had not attained would not. EPA reconsidered this result and found it to be unfair and inappropriate. Further, upon reanalyzing Clean Air Act section 176(c)(5), this previous interpretation did not fit with the text of the statute.

As stated in the April 30, 2004 final 8-hour implementation rule (69 FR 23987), EPA has concluded that the better interpretation of the statute is that conformity would not apply in 1-hour maintenance areas once the 1-hour standard is revoked, because maintenance areas are relieved of the obligation under Clean Air Act section 175A (42 U.S.C. 7505a) to have a maintenance plan. Since these areas are no longer required to have a maintenance plan, conformity no longer applies for the 1-hour standard in these areas as a matter of law, and no waiver of sovereign immunity applies to allow imposition of conformity requirements.

It is EPA's conclusion that areas that are in attainment for the 8-hour standard are not subject to conformity because the statute explicitly limits the applicability of conformity to designated nonattainment and maintenance areas for a given pollutant and standard. EPA notes that these areas still have incentive to monitor the growth of emissions from the transportation sector; if these areas violate the 8-hour standard, EPA would designate them nonattainment for the 8-hour standard and conformity would then apply. Although states cannot implement conformity for attainment areas as a matter of federal law, they could still work with their MPOs to estimate regional emissions that would be generated by the planned transportation system to see whether a violation could occur, and to address motor vehicle emissions growth. These type of state activities may be done under state law, when possible, or on a voluntary basis.

One commenter suggested that the 1-hour standard should remain in place until the 8-hour standard is fully implemented and no longer subject to legal challenges to ensure that one of the ozone standards is implemented. The commenter believed that this approach would be particularly important for areas impacted by regional transport. Other commenters stated that the 8-hour ozone standard should be delayed if revocation of the 1-hour standard becomes delayed.

EPA does not believe, however, that the current statutory and regulatory requirements allow us to extend conformity for the 1-hour standard or delay conformity for the 8-hour standard in the event of legal challenges, for example, as this commenter has suggested. In the April 30, 2004 final 8-hour ozone implementation rule, EPA specifically promulgated rules that will revoke the 1-hour standard one year after the effective date of 8-hour designations. Alternatively, Clean Air Act section 176(c)(6) and conformity rule § 93.102(d) require conformity for the 8-hour standard one year after the effective date of ozone nonattainment designations. Therefore, conformity for the 8-hour standard will apply in areas designated nonattainment for that standard on June 15, 2005. As previously stated, EPA has no statutory authority to extend the one-year conformity grace period and delay the conformity requirements in new 8-hour nonattainment areas.

A few commenters recommended that if 8-hour ozone SIP budgets are submitted and found adequate by EPA prior to revocation of the 1-hour standard, they should replace all prior ozone budgets, including those for the 1-hour standard. One commenter supported EPA's proposal to require that 1-hour conformity requirements be met prior to revocation, including adherence to the applicable 1-hour SIP budgets. Another commenter believed that only conformity for the 8-hour standard should apply once designations are made during the one-year grace period, rather than the 1-hour conformity requirements.

EPA addressed this issue of revocation as part of its April 30, 2004 final 8-hour implementation rule. EPA did not propose in its June 2, 2003, 8-hour implementation proposal to revoke the 1-hour standard earlier than one year after designations, since EPA intended to align the revocation of the 1-hour standard with the application of conformity requirements for the 8-hour standard one year after the effective date of 8-hour nonattainment designations. Furthermore, EPA did not expect that areas would be able to submit an 8-hour SIP earlier.

EPA continues to believe that most areas are unlikely to have adequate budgets that address the 8-hour standard before EPA revokes the 1-hour standard. Such budgets cannot stand alone but have to be associated with adopted control measures and demonstrations of either attainment or reasonable further progress, and EPA believes developing these SIPs will take states some time. Once the SIPs are submitted, EPA must find them adequate, a process which EPA intends to complete within 90 days of receiving a SIP in most cases. It is very unlikely that states will be able to complete the work to submit 8-hour SIPs prior to one year from the effective date of 8-hour designations, and much less likely that states would have submitted them sufficiently in time for EPA to find them adequate before the 1-hour standard is revoked.

Given these facts and the fact that EPA did not include in its June 2003 8-hour implementation proposal an option for revoking the standard earlier than one year after 8-hour designations are effective, EPA did not provide for early revocation of the 1-hour standard, nor will EPA require 8-hour areas to expedite development of their 8-hour SIP for this purpose. As described above, the Clean Air Act provides a one-year grace period before conformity for the 8-hour standard applies, so EPA is not able to mandate 8-hour requirements sooner, as suggested by one commenter. Prior to the revocation of the 1-hour standard, new or revised transportation plans and TIPs must conform to the applicable SIP budgets for the 1-hour standard.

Finally, one commenter believed that the final rule should address the situation where a new ozone nonattainment area can demonstrate conformity for the 8-hour standard during the grace period, but cannot for the 1-hour standard.

EPA has concluded consistent with the April 30, 2004 final 8-hour ozone implementation rule and today's action, the 1-hour standard will remain in effect for one year following the effective date of 8-hour nonattainment designations. EPA believes this is appropriate since 8-hour conformity cannot be required to apply before that time. Therefore, areas currently designated nonattainment or maintenance for the 1-hour ozone standard must demonstrate conformity for the 1-hour standard for any new or revised transportation plan, TIP and project approval during the one-year grace period for the 8-hour standard. In general, if an area must determine plan/TIP conformity during the grace period because of a required deadline and is unable to do so, the nonattainment or maintenance area's conformity for the 1-hour standard will lapse. This lapse would remain in effect until conformity for the 1-hour standard is re-established or the 1-hour standard is revoked, regardless of whether the area conforms for the 8-hour standard during that time period. On the other hand, if an area's plan/TIP meets conformity for the 1-hour standard but cannot meet conformity for the 8-hour standard during the grace period, the area would lapse when the one-year grace period ends, because at that point, conformity applies for the 8-hour standard.

C. How Do Areas Implement the One Year Conformity Grace Period and Transition From the 1-hour Ozone Standard?

In the November 5, 2003 proposal, EPA provided details on the application of the one-year conformity grace period in metropolitan, donut, and isolated rural nonattainment areas (68 FR 62695–62696). New nonattainment areas should refer to A. of this section and the November 2003 proposal for these discussions.

EPA received several questions and comments regarding general implementation for the new standards. The paragraphs below include general information on the implementation of conformity requirements for:

- Initial conformity determinations in new nonattainment areas;
- regional emissions modeling requirements in new nonattainment areas;
- timely implementation of transportation control measures (TCMs) in approved SIPs;
- multi-jurisdictional nonattainment areas (*e.g.*, multi-state areas and areas with sub-area budgets); and
- donut and isolated rural areas.

Both the November 2003 proposal's preamble and our response to comments below are based on implementation precedent to date, and do not create any new conformity policy. Section VI. of today's notice provides more details on the use of 1-hour ozone budgets in 8-hour ozone nonattainment areas. EPA will post more detailed implementation guidance on its transportation conformity website for conformity determinations in new standard areas, including 8-hour ozone areas with 1-hour SIP budgets and multi-state/multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity website.

1. Initial 8-hour Ozone and $PM_{2.5}$ Conformity Determinations

As described in A. of this section, areas that are designated nonattainment for the 8-hour ozone and/or $PM_{2.5}$ standard must determine conformity of transportation plans and TIPs by the expiration of the one-year conformity grace period for a relevant pollutant and standard. Metropolitan and donut 8-hour ozone and $PM_{2.5}$ nonattainment areas must complete all of the tasks that are required for a conformity determination (*e.g.*, interagency consultation, regional emissions analyses, public participation, MPO and DOT conformity determinations) during the relevant grace period in order to avoid a conformity lapse upon the expiration of the grace period.[11] Clean Air Act section 176(c)(6) specifically states that conformity will not apply in an area for a particular standard until one year after the area is designated for that standard. Thus, although completing conformity determinations for the new standards is not required prior to the end of the grace period, FHWA, FTA, and MPOs can choose to make determinations early for administrative purposes, when desired. FHWA and FTA have voluntarily agreed that they can make conformity determinations during the grace period even though it is not mandated by the Clean Air Act.

Metropolitan areas that are designated nonattainment for the 8-hour ozone and $PM_{2.5}$ standards can make transportation plan and TIP conformity determinations during their respective grace periods on a voluntary basis. In order to avoid a lapse, DOT must make its conformity determination prior to the end of the grace period. The timing of the next required plan and TIP conformity determinations will be determined pursuant to the frequency requirements in § 93.104 of the conformity rule, starting from the date of DOT's first conformity determination that includes a new regional emissions analysis under the new standards, even if this occurs prior to the end of the grace period. Thus, conformity determinations will always be conducted at intervals as required by the regulations.

Similarly, a conformity determination for a non-exempt FHWA/FTA project in a metropolitan, donut, or isolated rural area could be prepared during the one-year grace period, and submitted to DOT. DOT can make its conformity determination for such a project during the grace period. However, a conformity determination for a new standard might not be necessary if FHWA and FTA take all necessary approval actions prior to the end of the grace period. Once the conformity grace period expires, a project-level conformity determination is required whenever non-exempt projects complete the NEPA process, as defined in 40 CFR 93.101. For projects that complete the NEPA process prior to the end of the conformity grace period without a conformity determination for a new standard, a project-level conformity determination would be required for the next project phase that requires FHWA/FTA approval.

2. Regional Emissions Analysis Requirements in 8-hour Ozone and $PM_{2.5}$ Areas

One commenter requested clarification on whether different regional emissions analysis requirements will apply under the 1-hour and 8-hour ozone standards. In this rulemaking, EPA did not change the regional emissions analysis requirements in § 93.122 for existing and new nonattainment and maintenance areas. Therefore, new 8-hour ozone and PM2.5 areas must adhere to the same emissions analysis requirements as existing areas. For example, only 8-hour ozone nonattainment areas classified as serious, severe and extreme whose metropolitan planning area contains an urbanized population over 200,000 are required to meet the more rigorous transportation modeling requirements contained in § 93.122(b) of the conformity rule. Based on EPA's April 15, 2004 designations and classifications for 8-hour nonattainment areas as published in the **Federal Register** on April 30, 2004 (69 FR 23858), all nonattainment areas classified as serious or severe under the 8-hour ozone standard are already meeting these modeling requirements because they had a similar or higher classification under the 1-hour ozone standard. There are no nonattainment areas classified as extreme under the 8-hour standard.

However, even if these areas were required to expand the geographic area covered by their transportation model, these expanded areas would have a two-year grace period to revise their model to cover the full 8-hour ozone nonattainment area, as described in Section XXIII. and § 93.122(c) of today's action. Similarly, if there are 8-hour ozone nonattainment areas initially classified as serious or severe with an urbanized population greater than 200,000 that were never previously required to comply with the modeling requirements contained in § 93.122(b), either because their 1-hour classification was lower or their urbanized population was under 200,000, these areas would also have a two-year grace period to develop a new transportation model that satisfies these requirements. During the two-year grace period, affected areas must meet the requirements of § 93.122(d) of the conformity rule.

In addition, $PM_{2.5}$ nonattainment areas and all other 8-hour ozone nonattainment areas are also required to

[11] As described in A. of this section, isolated rural areas that are designated nonattainment for the 8-hour ozone and/or $PM_{2.5}$ standard may not need to demonstrate conformity by the expiration of the one-year grace period. Newly designated isolated rural areas are only required to determine conformity for the first time when a non-exempt federal highway or transit project requires funding or approval after the end of the one-year grace period.

comply with the transportation modeling requirements contained in § 93.122(d). This section requires these areas to continue to model regional emissions using all of the procedures described in § 93.122(b) where it has been their past practice. In other words, if an area has previously been required to demonstrate conformity and the area's transportation model and modeling practices either fully or partially complied with the requirements of § 93.122(b), the area must continue to model regional emissions for the 8-hour ozone and/or $PM_{2.5}$ standard using procedures which continue to meet these same aspects of the § 93.122(b) requirements that were previously met. Otherwise, areas may estimate regional emissions using any appropriate methods that account for growth in vehicle miles traveled (VMT) and consider future economic activity, transit alternatives and transportation system policies, as determined through the interagency consultation process.

3. Timely Implementation of TCMs in Approved SIPs

Section 93.113 of the existing conformity rule requires that transportation plans, TIPs, and projects which are not from a conforming plan and TIP must provide for the timely implementation of TCMs from an approved SIP. EPA notes that today's final rule does not change the implementation of these requirements for any existing or new nonattainment or maintenance area, including 8-hour nonattainment areas that have approved 1-hour SIPs that contain TCMs.

Clean Air Act section 176(c) requires that TCMs in approved SIPs be implemented in a timely manner according to the schedules in the SIP. This requirement is not contingent on what type of SIP, pollutant, or standard for which the approved TCM was established. Conformity determinations for any pollutant and standard must provide for the timely implementation of TCMs in approved SIPs, including TCMs in approved SIPs for the 1-hour ozone standard after that standard is revoked. Such TCMs can only be removed from the 1-hour SIP through the SIP process.

4. Multi-State Nonattainment Areas and Nonattainment Areas With Sub-Area Budgets

Some commenters requested clarification regarding how conformity would be implemented under the new standards in nonattainment areas with multiple MPOs or that cover multiple states. EPA believes that today's action is consistent with its existing conformity rule and historical precedent that provides flexibility to such areas. For example, nonattainment areas with multiple MPOs can establish sub-area motor vehicle emissions budgets in their 8-hour ozone or $PM_{2.5}$ SIPs to allow MPOs to do conformity separately, provided that all MPOs in such a nonattainment area continue to have conforming transportation plans and TIPs. EPA will post implementation guidance on its transportation conformity Web site for conformity determinations in multi-state and multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

5. Donut Areas

A few commenters requested clarifications pertaining to conformity implementation in portions of a nonattainment area that are not contained within the area's MPO boundary (*i.e.*, ''donut areas''). Specifically, one commenter requested that adjacent MPO and donut areas in the same nonattainment area be allowed to submit individual conformity determinations.

In general, EPA believes that regional emissions for an entire nonattainment area, including any donut portion, must be considered at the time a conformity determination is made to ensure that all transportation activities in that area conform. Therefore, EPA has not changed the current rule's requirements and existing precedent for donut areas in response to this comment. Areas that contain a donut portion should refer to the November 5, 2003 proposal (68 FR 62695–62696) for more information on the requirements for demonstrating conformity in donut areas.

Another commenter requested that EPA designate state transportation and air quality agencies as the lead agencies for conducting and completing conformity determinations for donut areas. This commenter believed that this process for demonstrating conformity in donut areas needs to be formalized through the interagency consultation process and/or a memorandum of understanding.

EPA anticipates that the state departments of transportation may take the lead in conducting regional emissions analyses for the donut portion in some nonattainment areas. However, there may be cases where an adjacent MPO is better suited to conduct such analyses or wants to include the donut area's projects in its plan and TIP and supporting regional emissions analysis. Section 93.105(c)(3) of the conformity rule relies on the interagency consultation process (including the MPO and state transportation agency) to determine how best to consider projects that are planned for donut areas located outside the metropolitan area and within the nonattainment or maintenance area in the conformity process. Section 93.105 also requires that such procedures for demonstrating conformity of donut area projects be included in an area's conformity SIP that is approved by EPA. Therefore, EPA believes that the existing rule's requirements and the flexibility provided by this provision remain appropriate and do not need to be revised to address this comment.

Another commenter raised concerns that in some nonattainment areas only portions of the donut area may be included in the MPO's transportation model. This commenter also suggested that emissions information for such outlying donut portions may not be readily available.

EPA understands that the donut portion of some new nonattainment areas may not be included in the adjacent MPO's transportation model and may not have as up-to-date or detailed planning information as the MPO. The conformity rule provides flexibility for modeling requirements in these areas. In fact, existing methods that are used in donut areas may already be suitable for conformity determinations. EPA does not believe that a travel demand model is required to estimate emissions for donut areas in most cases (provided that § 93.122(b) does not apply to the nonattainment area). See C.2. of this section for more information about the general transportation modeling requirements in 8-hour and $PM_{2.5}$ nonattainment areas.

In addition, the conformity rule requires the use of the latest planning assumptions and emissions models that are available at the time a conformity analysis begins (§§ 93.110 and 93.111). Today's change to the latest planning assumptions requirements is discussed in Section XX. of this preamble. For most donut areas, the most recently available Highway Performance Monitoring System (HPMS) estimates of VMT may be the only source of travel data available, and thus, should be used. Some donut areas may also need to rely on national default data (*e.g.*, speeds and vehicle registration data) included in EPA's most recent emissions model, MOBILE6.2, when estimating emissions if no local data is available for the donut area and it appears that the default data is more representative than the local information for the adjacent metropolitan area. In such a case the conformity determination for the area

should contain an explanation of why the default data was used for a portion of the nonattainment area. The interagency consultation process must be used to determine which planning assumptions are considered the latest and best for demonstrating conformity for donut areas prior to the expiration of the one-year conformity grace period.

6. Isolated Rural Areas

We received one comment that supported our November 5, 2003 proposal for implementing the conformity grace period in isolated rural areas. This commenter believed that due to the rarity of new non-exempt projects in these areas, requiring a conformity determination for only exempt projects would be a misuse of resources. EPA agrees with this comment, and therefore, clarified in the November 2003 proposal and today's final rule that conformity in isolated rural areas is required only when a non-exempt FHWA/FTA project(s) needs funding or approval. See A. of this section and the November 2003 proposal (68 FR 62696) for more information.

D. When and For What Ozone Standard Does Conformity Apply in Areas With an Early Action Compact for the 8-hour Ozone Standard?

1. Description of Final Rule

EPA has provisionally deferred into the future the effective date of 8-hour ozone nonattainment designations for areas participating in an Early Action Compact (EAC). The deferral of the 8-hour designation effective date is contingent upon the participating area's adherence to all the terms and milestones of its EAC, as described in EPA's November 14, 2002 memorandum entitled, ''Schedule for 8-Hour Ozone Designations and its Effect on Early Action Compacts,'' the December 16, 2003 proposed EAC rule (68 FR 70108), and the April 30, 2004 final designations rule (69 FR 23864).

Consistent with § 93.102(d) and Clean Air Act section 176(c)(6), conformity for the 8-hour ozone standard will not apply until one year after the effective date of an EAC area's 8-hour nonattainment designation. Therefore, conformity for the 8-hour ozone standard will apply in an EAC area only if the area fails to meet all the terms and milestones of its compact and the nonattainment designation becomes effective. In this case, conformity for the 8-hour standard will be required one year after the effective date of EPA's nonattainment designation that will occur shortly after a missed EAC milestone. Conversely, if the area meets all of the EAC milestones and attains the 8-hour ozone standard by December 2007, conformity for the 8-hour ozone standard would never apply since the area's ultimate effective designation would be attainment for the 8-hour ozone standard.

Conformity for the 1-hour ozone standard will continue to apply in EAC areas that are currently 1-hour ozone maintenance areas and are required to demonstrate conformity for that standard. If a maintenance area meets all of its EAC milestones and attains the 8-hour ozone standard by December 2007, conformity for the 1-hour standard will no longer apply once EPA revokes that standard one year after the effective date of EPA's 8-hour attainment designation (*i.e.*, spring 2009).

If, however, a 1-hour ozone maintenance area fails to meet a milestone in its EAC, EPA would lift its deferral, and the area's 8-hour ozone nonattainment designation would become effective shortly after the missed milestone. Under this scenario, conformity for the 1-hour ozone standard will continue to apply until one year after the effective date of EPA's nonattainment designation. Also occurring at one year after the nonattainment designation will be revocation of the 1-hour ozone standard, expiration of the one-year conformity grace period, and the application of conformity for the 8-hour ozone standard under Clean Air Act section 176(c)(6).

2. Rationale and Response to Comments

All commenters who addressed this topic supported EPA's approach for deferring the 8-hour ozone conformity requirements in EAC areas through deferral of the effective date of 8-hour designations. One of these commenters believed that EPA's proposal can yield positive results while imposing minimal constraints on states and localities. Other commenters believed that the EAC policy is a proactive approach for meeting Clean Air Act requirements and should reduce emissions and provide for attainment without the need of the conformity requirements. EPA agrees with these comments.

Another commenter raised concerns regarding how conformity would be implemented in 8-hour ozone nonattainment areas that are covered only partially by an EAC. For example, in a nonattainment area that contains a few donut counties that are not covered by a metropolitan area's EAC, this commenter argued that the conformity status of such an EAC would not lapse if the donut counties could not demonstrate conformity by the expiration of the one-year grace period. However, since 8-hour ozone nonattainment areas were not designated as the commenter described, EPA is not providing guidance in today's notice for such a situation.

IV. General Changes in Interim Emissions Tests

A. Background

Conformity determinations for transportation plans and TIPs as well as transportation projects not from a conforming plan and TIP must include a regional emissions analysis that fulfills certain Clean Air Act provisions. Section 176(c) requires that transportation activities in all nonattainment and maintenance areas must not worsen air quality. In addition, transportation activities in ozone and CO nonattainment areas of higher classifications also need to contribute emission reductions towards attainment.

The conformity rule provides for several different regional emissions analysis tests that satisfy these Clean Air Act requirements in different situations. Once a SIP with a motor vehicle emissions budget (''budget'') is submitted for an air quality standard and EPA finds the budget adequate or approves it as part of the SIP, conformity is demonstrated using the budget test for that pollutant or precursor, as described in § 93.118 of the conformity rule. Before an adequate or approved SIP budget is available, conformity of the transportation plan, TIP, or project not from a conforming plan and TIP is generally demonstrated with the interim emissions tests, as described in § 93.119.

The following subsections describe the final changes to the interim emissions tests (under § 93.119). Sections V., VI., and VII. describe the application of these tests in different 8-hour ozone and $PM_{2.5}$ areas (under § 93.109).

B. Baseline Year Test for 8-Hour Ozone and $PM_{2.5}$ Areas

1. Description of Final Rule

We are adding the following tests to the conformity rule for 8-hour ozone and $PM_{2.5}$ nonattainment areas:

- The ''less-than-2002 emissions'' test, and
- the ''no-greater-than-2002 emissions'' test.

Under these interim emissions tests, conformity would be demonstrated if the emissions from the proposed transportation system are either less than or no greater than 2002 motor

vehicle emissions in a given area. Regulatory text for the 2002 baseline year tests can be found in § 93.119. See Sections V.-VII. for how these tests will be applied in various 8-hour ozone and $PM_{2.5}$ areas.

EPA is not changing the 1990 baseline year tests for 1-hour ozone, CO, PM_{10} and NO_2 areas that do not have adequate or approved SIP budgets. However, § 93.119 has been reorganized to include the provisions for new 8-hour ozone and $PM_{2.5}$ areas.

Consistent with current practice, the interagency consultation process under § 93.105(c)(1)(i) must be used to determine the latest assumptions and models for generating 2002 motor vehicle emissions to complete either baseline year test. All 8-hour and $PM_{2.5}$ areas will be submitting baseline SIP inventories for the year 2002. As described in the proposal, the 2002 baseline year test can be completed with the SIP's 2002 motor vehicle emissions inventory, if the SIP has been submitted in time for the current conformity determination. Draft 2002 baseline year emissions from a SIP inventory under development or the consultation process could also be used to develop 2002 baseline year emissions as part of the conformity analysis. EPA believes that a submitted or draft 2002 SIP inventory may be the most appropriate source for completing the 2002 baseline year tests for an area's first conformity determination under the new standards. This is due to the fact that the 2002 SIP inventories should be under development at the same time as these determinations, and such inventories should be based on the latest available data at the time they are developed. Whatever the source, the 2002 baseline year emissions level that is used in conformity must be based on the latest planning assumptions available for the year 2002, the latest emissions model, and appropriate methods for estimating travel and speeds as required by §§ 93.110, 93.111 and 93.122 of the conformity rule.

2. Rationale and Response to Comments

Most commenters supported the proposal to use 2002 for the baseline year tests for the new air quality standards. These commenters also supported the use of the interagency consultation process to determine how the 2002 baseline emission level is calculated. However, a few commenters supported using a more recent baseline year (*i.e.*, 2003, 2004, 2005) for conformity analyses completed before 8-hour ozone or $PM_{2.5}$ SIP budgets are found adequate. These commenters argued that a more recent year should be used when reliable data are available to ensure that additional project approvals are not made during interim years with an artificially high 2002 motor vehicle emissions inventory.

EPA continues to believe that the year 2002 is more appropriate than either the 1990 baseline year or a more recent baseline year, as some commenters suggested. EPA believes that it is important to have transportation and air quality planning time frames coordinated. Having consistent baseline years for SIPs, conformity determinations and other emission inventory requirements helps to achieve this goal. This was the rationale for maintaining 1990 as the baseline year for conformity tests in existing areas, and past experience indicates that having similar baseline years for SIP and conformity planning purposes has worked well.

As described in the November 2003 proposal, EPA has selected 2002 as the baseline year for SIP inventories under the new 8-hour ozone and $PM_{2.5}$ standards. EPA's November 18, 2002 memorandum, ''2002 Base Year Emission Inventory SIP Planning: 8-hr Ozone, $PM_{2.5}$, and Regional Haze Programs,'' identifies 2002 as the emission inventory base year for the SIP planning process to address both of these pollutants and standards. EPA's April 30, 2004 final 8-hour ozone implementation rule also establishes 2002 as the base year for 8-hour ozone SIP inventories (69 FR 23951), as described in the June 2, 2003 proposal (68 FR 32810). Finally, EPA's Consolidated Emissions Reporting Rule (CERR) requires submission of emission inventories every three years, and 2002 is one of the required years for such updates. EPA continues to believe that coordinating conformity's baseline with other data collection and inventory requirements would allow state and local governments to use their resources more efficiently. In addition, since conformity is to be measured against a SIP it is appropriate to use the baseline year that will be used for SIP planning.

Furthermore, a 2002 baseline year is an appropriate measure for meeting Clean Air Act conformity requirements to not worsen air quality prior to adequate SIP budgets being established. EPA notes that emission inventories are generally not submitted until approximately two years after the year for which they are calculated. The 2002 inventories are scheduled to be submitted by the states to EPA in June of 2004, the year designations are made for the 8-hour ozone and $PM_{2.5}$ standards. In addition, emission inventories are not expected to vary by much in the few years following 2002. Emission inventories are generally trending downward, but year to year changes are generally small. Any advantage gained by using the most recent available inventory as the baseline for conformity purposes would be offset by the loss of coordination with other agencies and processes that will be possible by the use of 2002 as the baseline year. Therefore, EPA is retaining in this final rule the 2002 baseline year tests for conformity under the new air quality standards.

Finally, EPA is responding today to a comment that was raised in the context of the June 2, 2003 proposed 8-hour ozone implementation rule. A commenter supported using only the motor vehicle emissions inventories for the year 2002 as de facto interim motor vehicle emissions budgets for conformity determinations, during the time period before 8-hour areas have adequate or approved SIP budgets for the 8-hour standard. This commenter also suggested that the motor vehicle emissions inventory could be decreased 3% per year between the base year of 2002 and the attainment year, to represent ''reasonable further progress'' for the transportation sector.

EPA understands the commenter's point that the 2002 inventory is similar to a budget, in that both a 2002 baseline inventory and a SIP budget that is established to meet a Clean Air Act requirement serve as an emissions ceiling on future transportation actions. However, EPA does not agree that the 2002 baseline inventory could be used as a ''de facto budget'' and replace the interim emissions test requirements in today's final rule.

As described below, prior to adequate or approved SIP budgets being established, 8-hour ozone areas that are classified as moderate or higher are generally required to complete both the build-less-than-no-build and less-than-2002 interim emissions tests. Areas that are marginal or designated nonattainment under subpart 1 of part D of title 1 of the Clean Air Act (''subpart 1 areas'') could, in general, choose to use either the no-greater-than-2002 or the build-no-greater-than-no-build test prior to an 8-hour SIP. Finally, all 8-hour ozone areas have the option to submit a reasonable further progress SIP with budgets early and use the budget test, instead of the interim emissions test(s).

EPA appreciates the commenter's idea to decrease inventories incrementally for the purpose of the baseline year conformity test. However, given that EPA did not propose and receive public comment on this idea, the commenter's

suggestion is not included in today's final rule. Furthermore, EPA believes that the option for an area to submit an early 8-hour SIP that meets Clean Air Act requirements provides sufficient flexibility to transition areas quickly to the budget test for future conformity determinations, when desired. Please *see* Sections V. and VI. of the preamble for more information regarding the regional emissions tests that apply for 8-hour conformity determinations.

C. Build/No-Build Test for Certain Existing and New Nonattainment Areas

1. Description of Final Rule

EPA is revising the build/no-build test for certain existing and new nonattainment areas. Specifically, the final rule amends § 93.119 to create the ''build-no-greater-than-no-build'' test, where conformity is demonstrated if emissions from the proposed transportation system (''build'' or ''action'' scenario) are less than or equal to emissions from the existing transportation system (''no-build'' or ''baseline'' scenario).

Under today's final rule, the build-no-greater-than-no-build test is available to the following subset of new and existing areas:

- 8-hour ozone areas of marginal classification,
- 8-hour ozone areas designated nonattainment under subpart 1 of part D of title 1 of the Clean Air Act (''subpart 1 areas''),
- All $PM_{2.5}$ areas,
- 1-hour ozone areas of marginal and below classifications (*i.e.*, Section 185A, incomplete data, and sub-marginal areas),
- CO areas of moderate classification with design values less than 12.7 ppm,
- Not classified CO areas,
- All PM_{10} areas, and
- All NO_2 areas.

Sections V., VI., and VII. of this rule provide more detail regarding the application of the build/no-build test in various 8-hour ozone and $PM_{2.5}$ areas.

For areas that would be using the build-no-greater-than-no-build test, EPA is also modifying the existing rule so that a regional emissions analysis would not be necessary for analysis years where the build and no-build scenarios contain exactly the same transportation projects and are based on exactly the same planning assumptions, for the reasons described below. Such a case may occur in smaller areas that do not have projects planned for earlier years in the regional emissions analysis, and population, land use, economic, and other assumptions do not change between the build and no-build scenarios for those years. Under the final rule, a regional emissions analysis would continue to be required for any applicable years where the action and baseline scenarios contain different projects and are based on different assumptions.

This change can be found in § 93.119(g)(2) of the final rule regulatory text. The rule requires that the conformity determination include documentation that a regional emissions analysis is not completed for analysis years in which no new projects are proposed and no change in planning assumptions has occurred.

Finally, § 93.119 has been reorganized in general to accommodate the above and other changes articulated in this final rule for new and existing areas.

2. Rationale and Response to Comments

As explained in the November 5, 2003 proposal, EPA believes that allowing certain areas to use a build-no-greater-than-no-build test is consistent with Clean Air Act section 176(c)(3)(A)(iii), which specifically requires that transportation plans and TIPs contribute to annual emissions reductions only in the higher classifications of ozone and CO areas. This statutory provision does not apply to other types of nonattainment areas that are required to demonstrate only that transportation activities do not cause or contribute to new violations, increase the frequency or severity of existing violations, or delay timely attainment, pursuant to Clean Air Act section 176(c)(1)(B). EPA believes that if the ''build'' scenario emissions are no greater than (*i.e.*, less than or equal to) the ''no-build'' scenario emissions, that such a demonstration is made, since only an increase in emissions would worsen air quality.

This change to the build/no-build test also makes its implementation consistent with the implementation of the baseline year tests: In ozone and CO areas of higher classifications, expected emissions from the proposed transportation system must be less than emissions in the baseline year, while in all other areas, expected emissions must be no greater than emissions in the baseline year. For further discussion of the rationale for how and where the baseline year tests apply, please refer to the preamble to the January 11, 1993 proposed rule (58 FR 3782–3784), the preamble to the July 9, 1996 proposed rule (61 FR 36116–36117), and the November 5, 2003 proposal (68 FR 62701, 62705).

Most commenters supported EPA's proposal to provide the build-no-greater-than-no-build test in certain nonattainment areas. Many of these commenters agreed with EPA's interpretation of the Clean Air Act section 176(c)(3)(A)(iii) that ozone nonattainment areas that are not classified moderate or above, lower classified CO nonattainment areas and all PM_{10}, NO_2 and $PM_{2.5}$ areas are not required to demonstrate annual emissions reductions for conformity purposes. One commenter stated that, from a practical standpoint, the build and no-build options are often identical and believed that there is no reason to require emissions reductions prior to the submission of a SIP for such areas. A few commenters also believed that this rule revision would provide flexibility and resolve previous conformity issues in areas with few transportation projects, only non-regionally significant projects, or projects planned for only certain years of the transportation plan. EPA agrees with these comments.

A few commenters also believed that the proposed build-no-greater-than-no-build test should be available to all 8-hour ozone nonattainment areas, not just marginal or subpart 1 areas. Two of these commenters believed that EPA should extend this flexibility as satisfying the Clean Air Act section 176(c)(1)(B) requirement, that transportation plans only be required to not make air quality worse. However, EPA believes that extending this approach to CO and ozone areas of higher classifications would violate Clean Air Act section 176(c)(3)(A)(iii), which also requires transportation plans and TIPs in these areas to contribute to annual emissions reductions. The build-no-greater-than-no-build test does not satisfy this requirement.

In contrast, two commenters did not agree with EPA's proposal to change the previous build-less-than-no-build test to a build-no-greater-than-no-build test in certain nonattainment areas. One of these commenters was concerned that changing the build/no-build test in certain areas may hinder future ozone reductions by not requiring the implementation of transportation activities that would reduce emissions. This same commenter, however, agreed that this proposed revision to the build/no-build test would simplify the planning process. Another commenter did not agree with EPA's proposal because this commenter believed that the conformity requirements should be the same for all parties regardless of size or classification. The commenter believed that all nonattainment and maintenance areas should contribute to reducing emissions not only to improve their own air quality but also to benefit

the air quality in nearby airsheds as well. Further, the commenter argued that EPA's proposal could rectify a previous issue with the build/no-build test where the first analysis year is sufficiently close to the present year (the year in which the regional emissions analysis is being conducted) such that all of the non-exempt projects in the action scenario are also in the baseline scenario.

EPA believes that the Clean Air Act makes the distinction in requirements between areas of different pollutants and classifications and thus certain areas are not required to contribute reductions towards attainment prior to SIP submission. Therefore, EPA is not changing the final rule in response to these comments.

Another commenter requested clarification on the level of precision that is required to demonstrate conformity using the proposed build-no-greater-than-no-build test. For example, if an analysis resulted in emissions from the baseline (no-build) scenario being 9,000 pounds/day (4.500 tons/day) and emissions from the action (build) scenario being 10,998 pounds/day (5.499 tons/day), the commenter asked whether the agency performing the analysis could round both values off to 5 tons/day and claim that the build-no-greater-than-no-build test had been satisfied. This commenter believed that leaving this issue to be resolved through interagency consultation does not recognize that there are separate conformity interagency consultation rules for each region or perhaps each state or metropolitan area. The commenter questioned whether consistency in implementing the build-no-greater-than-no-build test could be maintained without sufficient guidance.

EPA believes that, at a minimum, rounding conventions used in conformity should be consistent with the level of precision used for the motor vehicle emissions budget in the local SIP. Rounding conventions should be discussed through the interagency consultation process and consider past conformity practices for the area. EPA notes that today's final rule only addresses how conformity analyses are performed; budgets cannot be rounded or changed from the emissions level that is determined by the SIP. If questions remain or if the area has never developed a local SIP, the interagency consultation process is the correct place to deal with questions of precision and rounding. The precision used in the development of local emissions inventories may vary depending on the size of the area and the resources available for the analysis. Decisions on rounding conventions for conformity analyses need to be consistent with local analysis methods and cannot easily be made at the national level. However, even given local variations in analysis methods, it is clear in the commenter's example that the build scenario produces emissions greater than the no-build scenario, and thus the test is not passed.

EPA also notes that the final rule will also reduce the resource burden for analysis years where no new projects are proposed to be completed and assumptions do not change. Under the previous rule, a regional emissions analysis is required for all analysis years, even if no new projects are proposed for analysis years in the distant future. For such analysis years, the emissions from the build and no-build scenarios contain the same projects and assumptions, and therefore, result in exactly the same level of emissions.

EPA believes that in such cases it is obvious that the build-no-greater-than-no-build test is passed without calculating the emissions for such analysis years. Furthermore, the Clean Air Act requirements to not worsen air quality or delay timely attainment may be met by documenting in the conformity determination that projects, assumptions, and thus emissions would remain the same for affected analysis years.

Most commenters supported EPA's proposal to not require a regional analysis in years where the build and no-build scenarios are exactly the same with the same projects and planning assumptions. Many of these commenters believed that the proposal would reduce burden on small urban areas with relatively few projects and resources for conducting conformity analyses. One commenter also believed that this proposal would prevent conformity lapses and would allow states to focus on those nonattainment areas with more transportation projects and more severe air quality issues. Two commenters believed this flexibility should also be extended to ozone nonattainment areas of higher classifications.

EPA agrees that this approach will likely relieve some of the burden of the conformity process on small areas with few projects and less serious air quality problems. However, ozone areas with higher classifications are required to meet a build-less-than-no-build test so this provision of today's final rule does not apply. In these areas, transportation plans and TIPs actually have to reduce emissions from current levels.

One commenter raised concerns with our proposal to waive regional analysis requirements for future analysis years when the build and no-build scenarios are exactly the same. This commenter did not agree with EPA's logic for the proposed rule revision, stating that the build and the no-build cases will always contain different assumptions regarding growth. Another commenter pointed out that EPA's proposal would be beneficial only when new projects are programmed in the later years of a plan, and no new projects are planned for the early years of the plan or TIP. However, in the reverse situation when projects are added in the early years of the TIP or plan but not in the later years, the commenter indicated that the effect of those projects would need to be reflected in the build scenario throughout the horizon years of the plan, via different VMT and speed estimates. In this case, the commenter stated that all analysis years should be modeled and included in the conformity determination.

EPA agrees with the commenter's understanding that the logic given in the November 5, 2003 proposal for this change was incorrect. We agree that an area would have different projects and assumptions in later years where projects were added in earlier years (these projects would always and only be in the build case for any years). However, we still think there are limited cases where projects and assumptions for both scenarios could be the same such as in earlier years. EPA believes that if the build and no-build scenarios are exactly the same and are based on exactly the same planning assumptions, by definition they cannot contain different assumptions about growth. This provision is intended to only apply in situations when the build and no-build scenarios are exactly the same. If there are any differences in the build and no-build scenarios, including differences in planning assumptions, speed or VMT, this provision would not apply.

One commenter believed that this flexibility should be available through the interagency consultation process, and that EPA should modify the conformity regulation to allow it subject to agreement among affected parties though the interagency consultation process. EPA agrees that consultation should be used to determine when this flexibility applies, but no rule change is needed to do that.

Finally, several commenters raised general concerns about the build/no-build test and offered other suggested changes to the test to address these concerns. For example, a few commenters did not believe that the ''no-build'' scenario always provides an

appropriate basis for conformity demonstrations, particularly in the outyears of the transportation plan. To address this issue, one commenter proposed that for all analysis years in the second 10 years of the transportation plan, the ''no-build'' scenario should be the ''build'' scenario from the previous analysis year.

EPA agrees that there are limitations in the usefulness of the build/no-build test for assessing longer-term air quality impacts of highway and transit projects. In fact, this is the primary reason that the build/no-build test is an interim test prior to the availability of an adequate or approved SIP budget. EPA does not believe the suggested changes to the build/no-build test are necessary and would ensure protection of air quality during this interim period. For example, the suggested change proposed by one of the commenters could allow emissions increases. In addition, many commenters supported the flexibility to choose between build/no-build and baseline year tests, as described in Sections V., VI., and VII. Since these general comments were not germane to the proposal, we have included a full response to these comments in the separate response to comments document, which is in Public Docket I.D. no. OAR–2003–0049.

D. Test Requirements for Ozone and CO Nonattainment Areas of Higher Classifications

1. Description of Final Rule

EPA is retaining the requirement that ozone and CO areas of higher nonattainment classifications must meet both the build-less-than-no-build *and* less-than-baseline year tests to demonstrate conformity in the period before SIP budgets are available. This provision will affect moderate and above 1-hour and 8-hour ozone areas, moderate CO areas with design values greater than 12.7 ppm, and serious CO areas. This requirement is identical to the requirement of the existing conformity rule for these areas, and was the first of three options proposed for regional emissions analyses before adequate or approved SIP budgets are established.

EPA had requested comment on the following proposed options for these areas:

(1) Complete *both* the build-less-than-no-build *and* less-than-baseline year tests;

(2) Complete *either* the build-less-than-no-build or less-than-baseline year test; or

(3) Require that only one of these tests be met and eliminate the second test as an option altogether.

The first option, which EPA has selected for the final rule, will retain the current conformity rule requirement that such areas use both the current build-less-than-no-build test and the less-than-baseline year test. Under this option, emissions from the proposed transportation system (build) will have to be less than emissions from the existing system (no build) and less than emissions in 1990 (for higher classification 1-hour ozone and CO areas) or 2002 (for higher classification 8-hour ozone areas). See the proposal for further background information on options 2 and 3 (November 5, 2003, 68 FR 62699–62700).

2. Rationale and Response To Comment

Based on our review of the proposal, the existing requirements of the conformity rule, and comments submitted, EPA has concluded that option 1, the existing conformity requirements, will better meet the dual statutory requirements for ozone and CO areas of higher classifications. These areas must demonstrate that transportation activities not cause or contribute to violations of the standards or delay timely attainment of a standard (Clean Air Act section 176(c)(1)(B)) and that such activities also contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)).

EPA's proposal was intended to explore potential alternatives in an effort to provide the most flexible and least burdensome way of meeting statutory requirements. When EPA first promulgated the transportation conformity rule (January 11, 1993, 58 FR 3782), EPA determined that moderate and above 1-hour ozone areas and CO areas of higher classifications would have to meet both the build-less-than-no-build test and the less-than-baseline year test to satisfy both applicable statutory requirements that transportation activities not cause or contribute to violations of the standards (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)). EPA also discussed our rationale for these areas in a July 9, 1996, proposed rule (61 FR 36116–36117).

Although the majority of the comments supported option 2, a choice between either the build/no-build or baseline year test, these commenters primarily supported this option out of a stated desire to obtain greater flexibility in meeting conformity requirements. No commenters provided any further rationale for the option or explained how the statutory requirements could be satisfied with only one test. In contrast, the commenters supporting option 1, continuation of the existing rule requirement to meet both the tests, provided compelling arguments indicating that both tests would be necessary to meet the statutory requirements. Further, comments on option 3 noting why either test would be superior provided additional indication that either test by itself could not meet both statutory obligations. In the face of these comments, as explained below EPA does not believe it can alter the current rule requiring the use of both tests.

The totality of the comments led EPA to conclude that if only the baseline test were required, in an area where motor vehicle emissions were declining significantly as a result of technology improvements in vehicle engines and fuels, the transportation plan itself might not be contributing to emissions reductions while the area as a whole was still meeting the baseline test. This would not meet the statutory requirement that such transportation activities themselves must contribute to emissions reductions. In contrast, in ozone and CO areas of higher classifications, the build/no-build test alone would not guarantee that emissions from the planned transportation system are less than emissions in the baseline year, even if emissions from the planned transportation system (the build case) are less than the current transportation system (the no-build case). This could fail to meet the statutory requirement that activities not contribute to violations of the standard.

Thus, based on the Agency's reasoning in past conformity rules and the comments submitted in this rulemaking, EPA believes that it must continue to require the use of both the baseline year and build/no-build tests in ozone and CO areas of higher nonattainment classifications prior to the availability of SIP budgets in order to satisfy applicable statutory obligations. In light of this conclusion, EPA is not responding in detail in this preamble to the numerous comments indicating policy choices for which of the two tests should be chosen or how the choice should be made, since EPA is requiring the use of both tests on legal grounds. A full response to all comments is included in the separate response to comments document available in the docket for this final rule.

V. Regional Conformity Tests in 8-hour Ozone Areas That Do Not Have 1-Hour Ozone SIPs

A. Description of Final Rule

This section covers the provisions EPA is finalizing in today's rule for regional emissions analyses in 8-hour ozone areas that do not have an existing 1-hour ozone SIP with applicable budgets. These 8-hour ozone areas either were never designated nonattainment under the 1-hour ozone standard or were 1-hour ozone nonattainment areas that never submitted a control strategy SIP or maintenance plan with approved or adequate budgets. A regional emissions analysis is the part of a conformity determination that assesses whether the emissions produced by transportation activities are consistent with state, local, and federal air quality goals. EPA describes the final rule in four parts, as in the proposal: Conformity when 8-hour budgets are available, conformity before 8-hour budgets are available, conformity in clean data areas, and general implementation of regional emissions tests.

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Once a SIP for the 8-hour ozone standard is submitted with a budget(s) that EPA has found adequate or approved, the budget test must be used in accordance with § 93.118 to complete all future applicable regional emissions analyses for 8-hour conformity determinations. In other words, once EPA finds a budget from an 8-hour ozone SIP adequate or approves an 8-hour ozone SIP that includes such a budget, the interim emissions test(s) will no longer apply for that precursor. This provision is found in § 93.109(d)(1) of today's rule.

The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.,* rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas ''are free to establish, through the SIP process, a motor vehicle emissions budget [or budgets] that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emissions budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress towards attainment'' (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from the current level of emissions, instead of the specific percentage required by the Clean Air Act for moderate and above ozone areas. For example, an area could submit an early 8-hour ozone SIP that demonstrates a 5–10% reduction of emissions in the year 2007, from 2002 baseline year emissions. An approvable early 8-hour SIP would include emissions inventories for all emissions sources for the entire 8-hour nonattainment area and would meet applicable requirements for reasonable further progress SIPs. For more information on establishing an early SIP and how it could be used for conformity, please refer to the final 8-hour ozone implementation rule (April 30, 2004, 69 FR 23951).

Air quality agencies responsible for developing 8-hour ozone SIPs must consult on their development with the relevant state and local air quality and transportation agencies per § 93.105(b). EPA Regions are available to assist on an ''as needed'' basis, including consultation on the development of early 8-hour ozone SIPs.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Before adequate or approved 8-hour ozone SIP budgets are established in 8-hour ozone areas that do not have 1-hour ozone SIPs, the regional emissions analysis is done using one or two interim emissions tests, depending on the area's classification or designation as described below. These provisions are found in § 93.109(d)(2)–(4) of today's rule.

Marginal and below classifications and subpart 1 areas. These 8-hour ozone nonattainment areas include: 8-hour ozone areas classified marginal and 8-hour ozone areas designated nonattainment under Clean Air Act subpart 1. These areas must pass one of the following tests in accordance with § 93.119 for conformity determinations that occur before adequate or approved 8-hour ozone SIP budgets are in place:

- The build-no-greater-than-no-build test, or
- The no-greater-than-2002 emissions test.

That is, emissions in all analysis years from the transportation system, as modified by the proposed transportation plan or TIP, must be less than or equal to emissions from either:

- The existing transportation system (the ''no-build'' case) in each of those analysis years, or
- The transportation system in 2002.

A discussion of the interim emissions tests can be found in Section IV. See also EPA's April 30, 2004 final 8-hour ozone implementation rule (69 FR 23951) for more information on 8-hour ozone areas designated under Clean Air Act subpart 1 (''subpart 1 areas'').

Moderate and above classifications. These areas include: 8-hour ozone nonattainment areas classified as moderate, serious, severe, and extreme. These areas must pass both of the following tests in accordance with § 93.119 for conformity determinations that occur before adequate or approved 8-hour ozone SIP budgets are in place:

- The build-less-than-no-build test, and
- The less-than-2002 emissions test.

That is, emissions in all analysis years from the transportation system, as modified by the proposed transportation plan or TIP, must be less than each of the following comparison cases:

- The existing transportation system including projects currently under construction (the ''no-build'' case) in each of those analysis years, and
- The transportation system in 2002.

For more information regarding these interim emissions tests for moderate and above ozone areas, please *see* Section IV.D.

3. Options for 8-Hour Ozone Areas That Qualify for EPA's Clean Data Policy

In § 93.109(d)(5) of today's rule, EPA is extending the conformity rule's flexibility for 1-hour moderate and above ''clean data areas'' to 8-hour areas that meet the criteria of the clean data policy. As described in the November 5, 2003 proposal, EPA issued a policy memorandum on May 10, 1995 that addressed SIP requirements in a small number of moderate and above 1-hour ozone areas (entitled ''Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard''). Please see the November 5, 2003 proposal for further background on EPA's existing clean data policy and conformity options (68 FR 62700–62701).

Clean data areas under today's final rule are moderate and above ozone areas with three years of clean data for the 8-hour ozone standard that have not submitted a maintenance plan and for which EPA believes it is reasonable to interpret the Clean Air Act's reasonable further progress and attainment demonstration requirements so as not to require areas that are meeting the ozone standard to make certain SIP submissions. In addition, some subpart 1 areas may also be eligible for the clean data policy if they are required to submit control strategy SIPs. Areas that qualify for EPA's clean data policy

under the 8-hour standard can use one of the following three options to complete regional emissions analyses:

- The interim emissions tests, as described above;
- the budget test using the adequate or approved motor vehicle emissions budgets in an 8-hour ozone SIP; or
- the budget test using the motor vehicle emissions levels in the most recent year of clean data as budgets, if the state or local air quality agency requests that budgets be established by EPA's clean data rulemaking for the 8-hour ozone standard and EPA approves the request.

As stated in Phase 1 of EPA's final 8-hour ozone implementation rule (April 30, 2004, 69 FR 23974), EPA intends to extend the existing clean data policy to applicable 8-hour ozone areas, and will respond on this issue in its future Phase 2 final 8-hour ozone implementation rule.

Please note that EPA's clean data policy, and therefore today's provision allowing emissions in the most recent year of clean data to be used as a budget, might not be available in any area for the first 8-hour conformity determination. Newly designated areas may not yet have three years of clean data for the 8-hour standard when the first conformity determination is due for that standard. As discussed in Section III., the first plan/TIP conformity determination is due by June 15, 2005, one year after the effective date of 8-hour designations.

4. General Implementation of Regional Tests

Regional emissions analyses for ozone areas must address both ozone precursors, which are nitrogen oxides (NO_X) and volatile organic compounds (VOCs) (40 CFR 93.102(b)(2)(i)). Before budgets are available, areas must meet the appropriate interim emissions test(s) for both VOC and NO_X precursors, unless EPA issues a NO_X waiver for the 8-hour standard under Clean Air Act section 182(f). This provision is consistent with the conformity rule to date, although in today's final rule the NO_X waiver provision is moved to § 93.119(f) (from § 93.119(d)) because of the reorganization of § 93.119. Once an adequate or approved SIP budget is available for the 8-hour standard, it must be used for regional emissions analyses.

In general, if a budget is available for only one ozone precursor, the interim emissions test(s) will continue to apply for the other precursor. For example, this situation would occur when a reasonable further progress SIP is submitted with a budget for VOCs only (*e.g.*, a 15% SIP), and this case is specifically covered by § 93.109(d)(3). In this example, an area would use the budget test for VOCs and the interim emissions test(s) for NO_X, unless it has a NO_X waiver as described above.

The consultation process must be used to determine the models and assumptions for completing either the interim emissions tests or the budget test, as required by § 93.105(c)(1)(i) of the current rule.

B. Rationale and Response to Comments

The use of the budget test once budgets are available for an air quality standard is based on the requirements of the Clean Air Act. Once budgets have been found adequate or approved, the budget test provides the best means to determine whether transportation plans and TIPs conform to a SIP and complies with the statutory obligation to be consistent with the emissions estimates in SIPs, according to Clean Air Act section 176(c)(2)(A). Several commenters specifically agreed that once a SIP for the 8-hour ozone standard is submitted with a budget(s) that EPA has found adequate or approved, the budget test should be used. One of these commenters stated that the advantage of the budget test is that areas have a high degree of confidence in attaining and maintaining the standards if emissions are held to budget levels from SIPs demonstrating attainment and maintenance. Another of these commenters strongly supported establishing 8-hour budgets through the submission of early SIPs, as discussed above.

Before budgets are available, the final rule's interim emissions test requirements for 8-hour areas are generally consistent with requirements for 1-hour areas. In general, several commenters supported the flexibility provided by the test options for 8-hour marginal and subpart 1 areas that do not have 1-hour ozone SIPs.

EPA believes that it is reasonable and credible to provide 8-hour ozone areas that are not classified moderate or above the same flexibility that applies under the 1-hour ozone standard. Several commenters specifically supported allowing these 8-hour ozone areas a choice between the baseline year and build/no-build tests. EPA determined in the 1997 conformity rule that either test could satisfy the statutory test of not causing or contributing to violations or delaying attainment in these areas, and the Agency believes this would continue to be true for new 8-hour areas, as discussed further below.

A few commenters requested clarification that the interim emissions test options remain available in subsequent conformity determinations until adequate or approved budgets are in place. These commenters are correct that while no 8-hour ozone budgets are available, areas are free to choose either test for a conformity determination, regardless of what test was used for a prior conformity determination. For example, if an MPO within a marginal 8-hour nonattainment makes a conformity determination based on the build-no-greater-than-no-build test, this would not preclude them, prior to adequate or approved budgets, from making a future conformity determination based on the no-greater-than-2002 emissions test. However, under these final rules, the same test must be used for each analysis year for a given conformity determination. In other words, an MPO may not use the build-no-greater-than-no-build test in one analysis year and the no-greater-than-2002 test in another analysis year within the same conformity determination. EPA believes that sufficient flexibility exists without mixing and matching interim emissions tests for different analysis years within one conformity determination, which is unnecessarily complicated and suggests that the area would not conform using one test consistently.

One commenter advocated that state air agencies should have the authority to determine which test is used, because in the commenter's view the state air agency would best be able to choose the test that ensures progress towards attainment. However, EPA believes that it is appropriate for the decision to be made within the interagency consultation process, as has been done to date. Given that MPOs have responsibility for making the conformity determination, and would need to set up the no-build network if the build-no-greater-than-no-build test is used, EPA believes they need to take part in choosing the test. State air agencies are insured a role in the transportation conformity process through interagency consultation, as § 93.105 of the conformity rule sets forth the requirements for state air agencies' participation in the conformity process, as well as a process for resolving conflicts. The state air agency role is also addressed in the preamble to the 1993 rule (November 24, 1993, 58 FR 62201). EPA continues to believe that the conflict resolution process provides a mechanism for the state air agency to elevate issues to the governor if they cannot be resolved by state agency officials, and that the process facilitates collaboration which is essential to

cooperative transportation and air quality planning. Therefore, EPA is not changing the final rule in response to this comment.

A few commenters supported one or the other of the proposed interim emissions tests in 8-hour marginal or subpart 1 areas. One commenter supported elimination of the build-no-greater-than-no-build test because no specific allowable level or limit is placed on emissions levels associated with the no-build scenario, while the no-greater-than-2002 test compares future emissions to a specified allowable level. However, another commenter made an opposing argument against the use of the no-greater-than-2002 test arguing that if an area was not attaining the 8-hour ozone standard in 2002, then the no-greater-than-2002 test allows emissions to continue at a level that will not bring the area into attainment. A third commenter suggested that prior to adequate or approved SIP budgets, emissions should be held to as low a level as possible to prevent an area from proceeding with transportation projects that may preclude them from meeting the 8-hour ozone standard in the future.

Since the transportation conformity rule was promulgated on November 24, 1993 (58 FR 62188), the build-less-than-no-build and less-than-1990 tests have been part of the transportation conformity rule as appropriate tests in meeting the conformity requirements of the Clean Air Act prior to the availability of SIP budgets. In the August 15, 1997 amendments (62 FR 43780), the transportation conformity rule was amended to allow ozone areas not classified moderate or higher to meet either the build-less-than-no-build test or the no-greater-than-1990 test. Our rationale for this change is found in the proposed rulemaking for those amendments (July 9, 1996, 61 FR 36112).

Though EPA has updated the tests in today's rule, our rationale for allowing 8-hour marginal and subpart 1 areas to choose between the two tests remains the same as described in the 1996 proposal. When there are no adequate or approved budgets, EPA believes that either test meets the Clean Air Act requirement that transportation activities will not cause new violations, increase the frequency or severity of existing violations, or delay timely attainment. In contrast to ozone areas of higher classifications, transportation activities in these areas are not required to contribute to emissions reductions per Clean Air Act section 176(c)(3)(A)(iii).

Though EPA considered additional options for moderate and above 8-hour ozone areas as discussed in Section IV.D., the final rule is consistent with requirements for 1-hour ozone areas. In 8-hour nonattainment areas classified moderate or above, EPA believes the build-less-than-no-build and the less-than-2002 tests together support the determination that a transportation plan, TIP, or project will not cause new violations, increase the frequency or severity of existing violations, or delay attainment. In addition, these tests together demonstrate that plans and TIPs contribute to emissions reductions required by section 176(c)(3)(A)(iii) of the Clean Air Act. Additional discussion of the rationale for both tests in these areas is also found in Section IV.D.

EPA is also continuing to provide more choices to areas that qualify for EPA's clean data policy. As EPA intends to include the clean data policy in EPA's Phase 2 final 8-hour ozone implementation rule, EPA is including the conformity options for such areas in today's conformity rule. These provisions will be able to be used once EPA has found that an area is a clean data area for the 8-hour standard pursuant to the regulations the Agency intends to promulgate under Phase 2 of the 8-hour implementation rule. See EPA's previous discussion and rationale for the conformity clean data options from the preamble to the 1996 proposed and 1997 final transportation conformity rule amendments (July 9, 1996, 61 FR 36116; and August 15, 1997, 62 FR 43784–43785, respectively). Two commenters supported extending the clean data policy to qualifying 8-hour ozone areas. One reasoned that conformance with budgets constrained by emissions levels during years in which the area demonstrated attainment should not cause or contribute to nonattainment, and thus meeting any one of the tests for clean data areas should be sufficient to demonstrate conformity.

However, two commenters stated that EPA should not apply a ''clean data policy'' to ozone areas classified as moderate or above because Clean Air Act sections 172 and 175A require a completed SIP containing measures that must be implemented if the area backslides into nonattainment, and a maintenance plan if the area seeks to avoid implementing some elements of its nonattainment plan.

In today's final rule, EPA is not making changes to its existing clean data policy, nor to the conformity process for clean data areas. EPA is merely extending the conformity flexibility that 1-hour ozone clean data areas have to the 8-hour ozone clean data areas. EPA believes this is appropriate since the Agency intends to extend the clean data policy to 8-hour areas for SIP purposes in Phase 2 of the final 8-hour ozone implementation rule. EPA will respond to all comments on the appropriateness of that extension in the final action on Phase 2 of the final 8-hour implementation rule.

Finally, one commenter wanted EPA to issue VOC waivers for areas that are NO_X limited, so they can focus on getting NO_X reductions. However, though section 182(f) of the Clean Air Act specifically provides that EPA could waive NO_X requirements in certain areas, the Clean Air Act provides no such flexibility with respect to VOCs. Since VOCs are clearly an ozone precursor, ozone areas must demonstrate conformity to VOC levels that provide for attainment and maintenance to prevent potential future violations, even in areas that may not need additional VOC reductions to attain. EPA has no ability to offer any provision to give areas VOC waivers.

VI. Regional Conformity Tests in 8-Hour Ozone Areas That Have 1-Hour Ozone SIPs

A. Description of Final Rule

This section covers how regional emissions analyses must be done in 8-hour ozone areas with an existing 1-hour ozone SIP that covers either part or all of the 8-hour ozone nonattainment area. The regulatory text in § 93.109(e) provides a general overview of when the budget test and interim emissions tests apply in 8-hour ozone nonattainment areas with adequate or approved 1-hour ozone SIP budgets. As in Section V., EPA describes the final rule provisions in four parts: conformity when 8-hour budgets are available, conformity before 8-hour budgets are available, conformity in clean data areas, and general implementation of regional emissions tests.

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Once a SIP for the 8-hour ozone standard is submitted with budget(s) that EPA has found adequate or approved, the budget test with the budgets from the 8-hour ozone SIP must be used in accordance with § 93.118 to complete the regional emissions analysis for 8-hour conformity determinations. The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (*e.g.*, rate-of-progress SIP or attainment demonstration). The first SIP could also

be submitted earlier and demonstrate a significant level of emission reductions from the current level of emissions, as described in Section V.A.1. Any existing 1-hour ozone SIP budgets and/or interim emissions tests will no longer be used for conformity for either NO_X or VOCs once an adequate or approved 8-hour SIP budget is established for such a precursor. State, local, and federal air quality and transportation agencies must consult on the development of 8-hour ozone SIPs including their budgets as appropriate, pursuant to § 93.105 of the conformity rule.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Under today's final rule, all 8-hour areas with adequate or approved 1-hour budgets must use these budgets for 8-hour conformity before 8-hour budgets are available, unless it is determined through the interagency consultation process that using the interim emissions tests is more appropriate for meeting Clean Air Act requirements. In today's rule, the budget test using the existing 1-hour ozone SIP budgets fulfills the regional emissions analysis requirement for the 8-hour ozone standard, rather than the 1-hour ozone standard. Please note that the 1-hour budgets are to be used as a proxy for 8-hour budgets. Conformity for the 1-hour and 8-hour ozone standards will not apply at the same time, according to EPA's April 30, 2004 final 8-hour ozone implementation rule, as described in Section III. of today's action.

There are four potential scenarios into which areas covered by this section can be categorized:

- *Scenario 1:* Areas where the 8-hour ozone area boundary is exactly the same as the 1-hour ozone area boundary;
- *Scenario 2:* Areas where the 8-hour boundary is smaller than the 1-hour boundary, (*i.e.*, the 8-hour area is completely within the 1-hour area);
- *Scenario 3:* Areas where the 8-hour boundary is larger than the 1-hour boundary (*i.e.*, the 1-hour area is completely within the 8-hour area); and
- *Scenario 4:* Areas where the 8-hour boundary partially overlaps the 1-hour area boundary.

EPA has posted diagrams of these four boundary scenarios for further clarification on the transportation conformity Web site. Please note that scenarios are determined according to how the entire 8-hour nonattainment area relates to the entire 1-hour nonattainment or maintenance area(s). For example, in a multi-state 8-hour area, the area's scenario and corresponding conformity requirements are based on the entire 8-hour area boundary, rather than on each state's portion of the 8-hour area. State and local agencies can consult with EPA and DOT field offices to determine which scenario applies to a given 8-hour nonattainment area.

The following paragraphs describe how regional conformity tests are applied in the four boundary scenarios, as well as the circumstances under which another test(s) may be appropriate. Please see A.4. of this section for further information regarding when another test may be appropriate for meeting Clean Air Act requirements. EPA will post more detailed implementation guidance on its transportation conformity website for conformity determinations in new standard areas, including 8-hour ozone areas with 1-hour SIP budgets and multi-state/multi-MPO nonattainment areas. Please also see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

Scenario 1: Areas where 8-hour and 1-hour ozone boundaries are exactly the same. In this case, the 8-hour and 1-hour ozone boundaries cover exactly the same geographic area. Such an area could be formed from a single 1-hour area, or more than one 1-hour area, as long as the entire 8-hour area boundary is exactly the same as the boundary of the previous 1-hour area or areas.

In these areas, conformity must generally be demonstrated using the budget test according to § 93.118 with the 1-hour SIP budgets, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(i) covers Scenario 1 areas. The interagency consultation process would be used to clarify the 1-hour budget(s) for the 8-hour area. The interim emissions test(s) would only be used if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year(s) in a regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule. EPA will post on its website implementation guidance for conducting 8-hour conformity determinations in multi-jurisdictional areas, including Scenario 1 areas with multiple states, MPOs, etc. Please see Section I.B.2. of this notice for information regarding EPA's conformity website.

Scenario 2: Areas where the 8-hour ozone boundary is smaller than and within the 1-hour ozone boundary. In this case, the 8-hour nonattainment area is smaller than and completely encompassed by the 1-hour nonattainment boundary. In these areas, conformity must generally be shown using one of the following versions of the budget test:

- The budget test using the subset or portion(s) of existing adequate or approved 1-hour ozone SIP budgets that cover the 8-hour nonattainment area, where such portion(s) can be appropriately identified; or
- The budget test using the existing adequate or approved 1-hour ozone SIP budgets for the entire 1-hour nonattainment area. However, in this case any additional emissions reductions beyond those addressed by control measures in the 1-hour SIP budgets need to pass the budget test and must come from within the 8-hour nonattainment area.

The budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(ii)(A) and (B) reflects these two choices. Though the November 5, 2003 proposed rule included both choices in one paragraph, today's rule separates them into different regulatory subparagraphs simply for ease of readability.

Once an area selects either of these budget test options, it must be used consistently for each analysis year of a given conformity determination. EPA believes that to do otherwise would be unnecessarily complicated and would imply that one test option used consistently for all analysis years may not demonstrate conformity. The interim emissions test(s) would only be used if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year(s) in the regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule.

As described in the November 2003 proposal, the first budget test option is available to an area if it is possible to determine what portion of the 1-hour budget applies to the 8-hour area. In that case, that portion can be used as the budget for the 8-hour area. Determining such a budget would be straightforward, for example, if the budget corresponds directly with an on-road mobile inventory for the 1-hour ozone SIP that was calculated by county, and the portion to be subtracted is a specific county that is not part of the 8-hour ozone area. However, where the 1-hour SIP does not clearly specify the amount of emissions in the portion of the 1-hour ozone area not covered by the 8-hour ozone area, this method may not be available. The consultation process would be used to determine whether using a portion of a 1-hour ozone SIP

budget is appropriate and feasible, and if so, how deriving such a portion would be accomplished.

In the second budget test option, a conformity determination based on the entire 1-hour ozone budget would include a comparison between the on-road regional emissions produced in the entire 1-hour ozone area and the existing 1-hour ozone budgets. However, if additional emissions reductions are required to meet conformity beyond those produced by control measures in the 1-hour SIP budgets, only reductions within the 8-hour ozone nonattainment area can be included in the regional emissions analysis. If conformity cannot be determined on schedule using either budget test option, only the 8-hour ozone nonattainment area would be in a conformity lapse.

Scenario 3: Areas where the 8-hour ozone boundary is larger than the 1-hour ozone boundary. This scenario will result when an entire 1-hour ozone nonattainment or maintenance area is contained within a larger 8-hour ozone area. For example, a Scenario 3 area would result when an 8-hour area is formed from an existing 1-hour area plus an additional county or counties that were not covered by the 1-hour standard. In these areas, the budgets from the previous 1-hour ozone area will not cover the entire 8-hour nonattainment area. However, conformity must consider regional emissions for the entire 8-hour ozone nonattainment area.

Therefore, in these areas, conformity must generally be demonstrated using the budget test based on the 1-hour ozone SIP budgets for the 1-hour ozone area, plus the interim emissions test(s) for one of the following:

- The portion of the 8-hour ozone nonattainment area not covered by the 1-hour budgets;
- The entire 8-hour ozone nonattainment area; or
- The entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

The budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The interim emissions tests would only be used instead of the 1-hour budget if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year in the regional emissions analysis, as explained in A.4. of this section and § 93.109(e)(2)(v) of the final rule. The regulatory text in § 93.109(e)(2)(iii)(A) and (B) reflects requirements for Scenario 3 areas. EPA notes that the final rule separates Scenario 3 and 4 area test requirements in the regulation for easier implementation.

The final rule's options for interim emissions tests are intended to give areas the flexibility to continue to implement conformity as they have under the 1-hour standard. EPA is clarifying this flexibility related to multi-state areas in the final rule since it was intended by the proposal and supported by public comments received.

For example, if an 8-hour multi-state nonattainment area with multiple MPOs has separate adequate or approved 1-hour budgets for each state, the MPOs would continue to determine conformity to their state's 1-hour budgets. In this special case where states and MPOs want to continue to work independently under the 8-hour standard, the budget test would be completed with applicable 1-hour SIP budgets for each state. In addition, the interim emissions test(s) would be done for either:

- any portion of a state's 8-hour nonattainment area that is not covered by a state's 1-hour SIP budget; or
- the entire portion of the 8-hour nonattainment area covered by that state.

EPA notes that the interim emissions test(s) could also be done for the entire 8-hour nonattainment areas under this final rule in this example. However, doing so may not allow each MPO in this example to develop transportation plans and TIPs and conformity determinations independently.

Rather than include all the possibilities of this type and others in today's preamble, EPA will post implementation guidance on its transportation conformity Web site for conducting 8-hour conformity determinations with 1-hour SIP budgets, including determinations in multi-state and multi-MPO nonattainment areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site. In any case, whether one or both interim emissions tests is required depends on the area's classification or whether an area is a subpart 1 area, as described in Section V. of today's preamble.

EPA acknowledges that there may be cases where it is difficult to model the remaining portion of the 8-hour ozone area separately, *e.g.*, in an area where the remaining 8-hour ozone area is a ring of counties around the 1-hour ozone area. In this case, an area may choose to complete the interim emissions test(s) for the entire 8-hour ozone area, rather than just the portion not covered by the 1-hour ozone budgets. Once an area selects a particular interim emissions test(s) and geographic coverage for such test(s), these choices must be applied consistently for all regional analysis years in a given conformity determination. For example, a marginal 8-hour ozone area that is larger than the 1-hour ozone area with one applicable 1-hour SIP can complete the regional emissions analysis by meeting the budget test for the 1-hour ozone nonattainment area and the no-greater-than-2002 test for the remaining portion of the 8-hour ozone area for all analysis years.

The consultation process should also be used to select analysis years for performing modeling where both the budget test (§ 93.118) and interim emissions test(s) (§ 93.119) are used. Sections 93.118(d) and 93.119(g) of the conformity rule both require the last year of the transportation plan and an intermediate year(s) to be analysis years where modeling is completed. However, the analysis years for the short-term may be different for the budget test and interim emissions tests in some cases. For example, § 93.118 requires modeling for the budget test to be completed for the attainment year if it is within the timeframe of the transportation plan; § 93.119 requires the first analysis year for the interim emissions tests to be within the first five years of the transportation plan. The consultation process can be used to select analysis years that satisfy both the budget and interim emissions test requirements as appropriate to avoid multiple modeling analyses in these cases.

Scenario 4: Areas where the 8-hour ozone boundary overlaps with a portion of the 1-hour ozone boundary. This scenario results when 1-hour and 8-hour boundaries partially overlap. For example, a Scenario 4 area could be an 8-hour area formed from a portion of one or more 1-hour areas plus new counties that were not covered by the 1-hour standard. As in the previous scenarios, these areas must generally use existing 1-hour budgets whenever feasible to determine conformity, plus the interim emissions test(s) when a portion of the 8-hour nonattainment area is not covered by existing 1-hour budgets.

In Scenario 4 areas, conformity must generally be demonstrated using the budget test based on the portion of the 1-hour ozone SIP budget(s) that covers both the 1-hour and 8-hour areas, plus

the interim emissions test(s) for one of the following:

- The portion of the 8-hour ozone nonattainment area not covered by the portion of the 1-hour budgets;
- the entire 8-hour ozone nonattainment area; or
- the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

EPA has also clarified in the regulatory text that only the budget test would be completed in the limited case where portions of 1-hour SIP budgets cover the entire 8-hour nonattainment area or portions thereof. Whatever the case, the budget test would be completed according to the requirements in § 93.118, as described in A.4. of this section. The regulatory text in § 93.109(e)(2)(iv)(A) and (B) reflect Scenario 4 area requirements. EPA again notes that the final rule separates Scenario 3 and 4 area test requirements for easier implementation.

The interim emissions tests would be used instead of a 1-hour budget only if it is determined through the consultation process that an adequate or approved 1-hour budget is not appropriate for a given year in the regional emissions analysis, or if it is not possible to determine what portion of the 1-hour budgets apply to the 8-hour area, as described in A.4. of this section and § 93.109(e)(2)(v) of the final rule.

As described for Scenario 3 above, the final rule is intended to give areas the flexibility to continue to implement conformity as they have under the 1-hour standard. EPA will post implementation guidance on its transportation conformity Web site for conformity determinations in Scenario 4 and other 8-hour areas. Please see Section I.B.2. of this notice for information regarding EPA's conformity Web site.

As described for Scenario 3, the consultation process should be used to select the analysis years where both the budget test (§ 93.118) and interim emissions test(s) (§ 93.119) are used. It should be possible to choose analysis years in most cases that satisfy both the budget and interim emissions test requirements for areas using both tests. Whether one or both interim emissions tests is required in any case depends on the area's classification or whether an area is a subpart 1 area, as described in Section V. of today's preamble.

3. Options for 8-Hour Ozone Areas That Qualify for EPA's Clean Data Policy

As described in Section V.A.3., EPA is extending the conformity rule's flexibility for 1-hour ozone ''clean data areas'' to 8-hour ozone areas that meet the criteria of the clean data policy. Clean data areas for the 8-hour ozone standard with adequate or approved 1-hour ozone SIP budgets must generally use one of the following three options to complete conformity:

- The budget test using the adequate or approved motor vehicle emissions budgets in a SIP for the 8-hour ozone standard;
- The budget and/or interim emissions tests using existing 1-hour ozone SIP budgets and/or applicable interim emissions tests, as described in A.2. of this section for different scenarios of 1-hour and 8-hour ozone nonattainment boundaries; or
- The budget test using the motor vehicle emissions level in the most recent year of clean data as budgets, if such budgets are established by the EPA rulemaking that determines an area to have clean data for the 8-hour ozone standard.

See the regulatory text for these options in § 93.109(e)(4), and preamble Section V.A.3. for more information about clean data areas.

4. General Implementation of Regional Tests

Under the existing conformity rule, regional emissions analyses for ozone areas must address NO_X and VOC precursors (40 CFR 93.102(b)(2)(i)). Areas must also complete the interim emissions test(s) for NO_X as required by § 93.119 if the only SIP available is a reasonable further progress SIP for either the 1-hour or 8-hour standard that contains a budget for VOCs only (*e.g.,* a 15% SIP). In all cases where areas use the interim emissions test(s), both precursors must be analyzed unless EPA issues a NO_X waiver for the 8-hour standard for an area under Clean Air Action section 182(f). This is consistent with the conformity rule to date, although today's final rule moves these provisions to § 93.119(f) due to reorganization of § 93.119. See § 93.109(e)(3) for this regulatory text.

The consultation process must be used to determine the models and assumptions for completing the budget test and/or the interim emissions test(s), as required by § 93.105(c)(1)(i) of the rule. The consultation process must also be used to decide if the interim emissions test(s) are more appropriate to meet the Clean Air Act requirements than existing adequate or approved 1-hour budgets before 8-hour ozone SIPs are submitted.

General implementation of the budget test with 1-hour budgets. The budget test requirements in § 93.118 for 8-hour areas will be generally implemented in the same manner as in 1-hour areas, with a few exceptions. First, as described above, the geographic area covered by the 8-hour standard may be different than that covered by the 1-hour standard and SIP budgets in some cases. Second, the years for which regional modeling is performed will slightly differ.

Areas that use 1-hour budgets for their 8-hour conformity determinations will need to determine the modeling analysis years that apply for the 8-hour standard per § 93.118(d). Under this section, a modeling analysis must be completed for the last year of the transportation plan, the attainment year for the relevant pollutant and standard, and an intermediate year(s) such that analysis years are not more than 10 years apart. The attainment year analysis is to be for an area's attainment year for the 8-hour standard, which will be different than the attainment year under the 1-hour standard. The area must then calculate emissions in the analysis years from the existing and planned transportation system.

Once modeling is completed per § 93.118(d)(2), 8-hour areas using 1-hour SIPs will also demonstrate consistency with 1-hour SIP budgets according to § 93.118(b), except for cases where it is determined that 1-hour SIP budgets are not appropriate through the consultation process as described above. According to § 93.118(b) of today's final rule as described in Section XXIII., consistency with 1-hour budgets must be shown for all 1-hour budget years that are within the timeframe of the transportation plan, the 8-hour attainment year (if in the timeframe of the plan), the last year of the plan, and an intermediate year(s) so that all years are not more than 10 years apart. Emissions projected for each analysis year must be within the budgets in the 1-hour SIP from the most recent prior year. Interpolation can be used between analysis years for demonstrating consistency with budgets, just as has been done under the 1-hour standard.

For example, suppose an area designated nonattainment for the 8-hour ozone standard with an 8-hour attainment date of 2010 has the following 1-hour SIP budgets:

- 2005 rate-of-progress budgets for NO_X and VOC_S,
- 2007 rate-of-progress budgets for NO_X and VOC_S, and

• 2007 attainment demonstration budgets for NO_X and VOC_S.

By 2005, this area would determine conformity for its 2005–2025 transportation plan and its TIP, and the conformity determination would be accomplished as follows:

• 2005 budget test, using the 2005 ROP budgets;

• 2007 budget test, using both 2007 ROP and attainment budgets;

• 2010 budget test, using the 2007 attainment budgets; [12]

• 2020 budget test, using the 2007 attainment budgets; and

• 2025 budget test, using the 2007 attainment budgets.

As described in § 93.118(d)(2), emissions for the year 2005 could be generated with a regional emissions analysis, or could be interpolated if the area has run a regional emissions analysis for an earlier year. Emissions for the year 2007 can also be interpolated or the area could choose to model emissions for this year. A regional modeling analysis must be done for the year 2010 (the 8-hour attainment year), any year between 2015 and 2020 for the intermediate year (in the above example, 2020 is the intermediate year), and the year 2025 (the last year of the transportation plan) as required by § 93.118(d)(2).

As stated in A.1. of this section, once adequate or approved 8-hour SIP budgets are established for a given precursor, the budget test would be completed with only the 8-hour SIP budgets for that precursor, rather than the 1-hour SIP budgets.

When might 1-hour SIP budgets not be the most appropriate test for 8-hour ozone conformity? Though EPA anticipates that exceptions to the use of the 1-hour budgets will be infrequent, there are some cases where using another test(s) may be more appropriate to meet Clean Air Act requirements. EPA expects such limited cases to be supported and documented in the 8-hour conformity determination for a given area. EPA notes that an adequate or approved 1-hour SIP budget cannot be considered inappropriate simply because it is difficult to pass for 8-hour conformity purposes. In addition, as noted below and consistent with past conformity precedent, 1-hour SIP budgets cannot be discarded simply because they are based on older planning assumptions or emissions models, unless through interagency consultation it is determined that a different emissions test(s) is more appropriate to ensure that air quality is not worsened for all 8-hour areas and that reductions are achieved in certain ozone areas.

The most likely example of when the budgets may not be the most appropriate test is where a 1-hour SIP budget is not currently used in conformity determinations for the 1-hour standard, and thus is currently not relied upon to measure whether transportation activities are consistent with Clean Air Act requirements. Such a case would happen when the SIP budget year is no longer in the timeframe of the transportation plan and there is no requirement to meet the budget test prior to the year in which the next 1-hour SIP budget is established (*e.g.,* the SIP established a budget for the 1-hour attainment year, but that attainment year has passed and budgets for future years are available).

For example, suppose a 1-hour maintenance area attained in 1999 and has a maintenance plan with budgets for 2009. If the area has an 8-hour attainment date of 2007, it would have to compare emissions in 2007 to the budgets from the most recent prior year, which would be the attainment budgets for the year 1999. In this case, the budgets are not currently in use for the 1-hour standard, and it may be more appropriate for an area to use the 2002 baseline year test for the 2007 analysis year, since the 2002 baseline could be lower and therefore more protective than the 1999 budgets. However, the maintenance area would use its 2009 budgets in the 1-hour maintenance plan to show 8-hour conformity for 2009 and all future analysis years.

Another example of when another test would be more appropriate than existing adequate or approved 1-hour SIP budgets would be in certain Scenario 4 areas where it is impossible to determine which portion of a 1-hour SIP budget covers an 8-hour nonattainment area. In this case, applying the budget test with 1-hour SIP budgets is not feasible, and consequently, only the interim emissions test(s) are available for such unique areas.

As described in Section V., when a SIP budget is not established a moderate or above ozone area would need to pass both interim emissions tests. Areas classified as marginal or designated under Clean Air Act subpart 1 can choose between the two tests when no budgets apply. However, in these cases where a 1-hour budget is available but the area demonstrates it is not the most appropriate test, EPA believes that the no-greater-than-2002 baseline year test would most likely be used. EPA believes it is extremely unlikely that the build/no-build test alone would ever be a more appropriate test than the budget test with existing 1-hour SIP budgets that are currently used for conformity purposes. See B.2. of this section below for further information regarding EPA's rationale for using 1-hour budgets and what is appropriate for meeting Clean Air Act requirements.

Areas must use the consultation process to decide whether the applicable interim emissions tests are more appropriate to meet Clean Air Act requirements than the 1-hour budgets, pursuant to § 93.109(e)(2)(v) of the final rule. In areas where another test(s) is used, areas must also justify selection of the specific test(s) chosen as being more appropriate for meeting Clean Air Act requirements than the available 1-hour SIP budgets. This decision should be discussed with all interagency consultation parties and documented in the conformity determination for the 8-hour standard.

B. Rationale and Response to Comments

1. Conformity After 8-Hour Ozone SIP Budgets Are Adequate or Approved

Several commenters strongly supported establishing budgets for the 8-hour standard through the submission of early SIPs. EPA agrees that Clean Air Act section 176(c) is met when the budget test is used, once budgets are available for an air quality standard. Once 8-hour ozone budgets have been found adequate or approved, the budget test provides the best means to determine whether transportation plans and TIPs conform to an 8-hour ozone SIP and comply with the statutory obligation to be consistent with the emissions estimates in SIPs, according to Clean Air Act section 176(c)(2)(A). A few commenters suggested that EPA urge states to establish budgets for the 8-hour standard early because of the potential complications without 8-hour budgets where the 8-hour boundary differs from the 1-hour boundary. EPA agrees that state and local agencies can choose to establish an early SIP for conformity purposes, however, each area needs to consider the benefits of an early SIP and impacts on state and local resources.

One commenter suggested that ozone areas should be required to consider emissions in the portion of the 8-hour area that is outside the boundary of the 1-hour standard when developing 8-hour SIPs. EPA agrees. In fact, they are required to consider these emissions because the SIP addressing the 8-hour standard must cover the entire 8-hour

[12] EPA has previously interpreted that only attainment budgets apply beyond the attainment year, in cases where ozone areas also have budgets for rate-of-progress SIPs.

nonattainment area. Please note that the conformity rule does not change existing SIP requirements and policy that will apply for the new standards.

Another commenter recommended that once 8-hour budgets are adequate or approved, areas should do conformity to both the 1-hour and the 8-hour standards. The commenter believed that doing conformity to both standards would not represent a significant hurdle. EPA has decided, however, to revoke the 1-hour standard when the 8-hour standard conformity grace period ends, one year after the effective date of 8-hour area designations. Once the 1-hour standard is revoked, conformity will no longer apply for that standard as a matter of law. Conformity therefore will only apply for one ozone standard at a time. Please see Section III. for more information regarding the conformity grace period and revocation of the 1-hour standard.

2. Conformity Before 8-Hour Ozone SIP Budgets Are Adequate or Approved

Though EPA proposed that areas could choose among several options before 8-hour budgets are available, today's rule requires the use of 1-hour SIP budgets, where available and appropriate, as a direct result of consideration of all of the relevant comments received on this issue. Section 176(c) of the Clean Air Act requires that transportation activities may not cause new violations, increase the frequency or severity of existing violations, or delay timely attainment. Using 1-hour budgets where available and appropriate ensures that air quality progress to date is maintained, air quality will not be worsened and attainment of the 8-hour standard will not be delayed because of emissions increases.

Once EPA finds a budget adequate or approves the SIP that includes it, the budget test provides the best means to determine whether transportation plans and TIPs meet Clean Air Act conformity requirements. EPA now believes this principle applies with respect to the 1-hour budgets in 8-hour nonattainment areas as well: in most cases, EPA concludes that the 1-hour budgets are the best test for determining conformity to the 8-hour standard before 8-hour ozone budgets are available because the 1-hour budgets have led to current air quality improvements. A couple of commenters noted that attaining the 1-hour standard is a milestone toward attaining the 8-hour standard. Some commenters mentioned that most 1-hour budgets in major urban areas are appropriate to use, especially in serious and above ozone areas that have budgets that have recently been updated with the MOBILE6 emissions factor model.

A number of commenters described how emissions could increase if areas use the interim emissions tests instead of their 1-hour budgets. Emissions could increase if areas use the 2002 baseline year test, commenters stated, because 2002 motor vehicle emissions are significantly higher than existing 1-hour budgets in many cases. Commenters provided an analysis of 2002 baseline emissions estimates compared to 1-hour ozone budget levels for 12 major metropolitan areas to illustrate that the 2002 motor vehicle emissions were significantly higher than the 1-hour budgets in these areas. For one major metropolitan area that had established MOBILE6-based attainment budgets for 2007, the 2002 baseline year test based on MOBILE6 would result in allowable VOC and NO_X emissions increasing by 44% and 56%, respectively, above the budget levels for the 1-hour ozone attainment demonstration. A second commenter corroborated this finding with data that showed VOCs could increase 47% and NO_X could increase 33% if 2002 emissions were used instead of the area's attainment budgets. Commenters concluded that emissions from motor vehicles could increase anywhere from 10 to 50% of the 1-hour budgets, and because motor vehicles represent a quarter to a half of all emissions in most metropolitan areas, the total emissions in an airshed could increase to the point where areas cannot attain the 8-hour standard.

Likewise, the build/no-build test could also lead to an increase in emissions over the 1-hour budgets and from current air quality progress, according to some commenters. Several commenters argued that the build/no-build test sets no meaningful limit on emissions growth because the test is satisfied as long as the build emissions are less than the no-build emissions, regardless of how much emissions increase in both the build and no-build cases.

Commenters also wrote to EPA about the results of using interim emissions tests where budgets are available. Many were concerned with negative impacts on public health due to the increase in emissions that could occur, especially impacts on children. One commenter predicted it would be difficult for areas to adopt future measures sufficient to offset the emissions increases that could result, and that such measures would impose increased burden on other source sectors, such as industrial sources and small businesses.

EPA found the evidence and the arguments presented by these commenters compelling, and we now believe that using the interim emissions tests would not fulfill the Clean Air Act conformity tests when appropriate 1-hour budgets are available. Some areas with 1-hour budgets have not yet attained the 1-hour standard, and the 8-hour standard is generally more stringent. In these areas, EPA believes that every additional ton of motor vehicle emissions allowed above the 1-hour budgets could impact an area's ability to attain the 8-hour standard and necessitate additional control measures.

Under today's rule, therefore, the interim emissions test(s) are only available if the circumstances warrant it, as determined through the interagency consultation process. EPA agrees with these commenters that the budget test is generally more protective of air quality and that the interim emissions tests do not meet sections 176(c)(1)(A) and (B) of the Clean Air Act when an appropriate 1-hour budget is available.

Furthermore, today's final rule is consistent with EPA's historical precedent that the budget test with an adequate or approved SIP budget is more appropriate than the interim emissions tests. As we stated in our July 9, 1996, conformity proposal (61 FR 36115), when motor vehicle emissions budgets have been established by SIPs, they provide a more relevant basis for conformity determinations. The baseline year and the build/no-build tests are sufficient for demonstrating conformity when an area does not have a budget. EPA created these tests based on the language in Clean Air Act section 176(c)(3). They ensure that emissions do not increase above emissions in a recent year, and show that the transportation plan and TIP contribute to emissions reductions, where required. However, these tests usually do not ensure that transportation emissions promote progress toward the air quality standards to the same extent that the use of motor vehicle emissions budgets do. Although the 1-hour SIP budgets are for a different standard, they still address ozone, will help areas make progress toward the new standard, and are a better reflection of the ozone pollution problem that each area faces than the interim emissions tests.

One commenter who supported requiring the budget test asked EPA to clarify whether 1-hour budgets remain in effect after revocation of the 1-hour standard. Once we revoke the standard, these budgets do not remain in effect for the 1-hour standard as conformity does not apply with respect to the 1-hour standard. However, those 1-hour budgets that are adequate or approved continue to be part of an area's SIP and

are therefore appropriate to use as proxies for the 8-hour standard. EPA notes that adjusting the 1-hour ozone budgets to correspond to the boundaries of the 8-hour area for purposes of conducting 8-hour ozone conformity analyses is legally appropriate since any 1-hour ozone SIP demonstrations and budgets would only be used as a proxy for the 8-hour ozone standard and would themselves no longer be for an applicable standard. Therefore, EPA believes that using the portion of the 1-hour SIP budget that covers the 8-hour nonattainment is appropriate for 8-hour conformity and that the relevant portion can be derived through the consultation process. For example, adding county level emissions to, or subtracting county level emissions from, the 1-hour budgets to reflect the geographic 8-hour area does not need to occur through a SIP revision or be reviewed through EPA's adequacy process. Using portions of 1-hour SIP budgets in this manner does not necessitate 8-hour or 1-hour SIP revisions, but merely are administrative analyses of what tests should be conducted for conformity purposes prior to submission of 8-hour SIPs. How these budgets are derived can be determined through the consultation process and documented in an area's conformity determination.

Many commenters supported our proposal to offer a menu of choices and use the interagency consultation process to choose the test. Most of these commenters simply stated their preference, but a few offered that the 2002 baseline year test may be better than the budget test when the 1-hour budgets are based on outdated planning assumptions or models. Today's final rule preserves an area's ability to decide that the 1-hour budgets are not the most appropriate test. However, budgets cannot be ignored solely because more recent planning assumptions or models are available. When budgets are not currently in use and in other cases where it is more appropriate for meeting Clean Air Act section 176(c) requirements, the consultation process must be used and the rationale for using other test(s) documented in the conformity determination.

Another commenter suggested that EPA should allow areas to choose among several tests because it has not yet classified areas or established attainment years. This was true as of the November 5, 2003 proposal, but at this point EPA has classified areas and established attainment years in the final 8-hour designations rule (April 30, 2004, 69 FR 23858). A few commenters thought that emissions should be held as low as possible, and therefore EPA should require areas to determine which of the tests is more protective through the interagency consultation process. Another commenter thought that the state air quality agency alone should choose the test to ensure that the conformity requirements of the Clean Air Act are met. EPA believes, however, that the budget test using the 1-hour budgets generally maintains current air quality progress and satisfies the Clean Air Act requirement that transportation activities not cause new violations, worsen existing violations, or delay timely attainment, as described above. Therefore, EPA is not incorporating the commenter's suggestion in today's rule, although air quality agencies are expected to play a significant role in the selection of the appropriate test through the consultation process in these areas, because they developed 1-hour SIPs and budgets.

One commenter suggested that where the 8-hour area is smaller than the 1-hour area (Scenario 2), a budget could be created for the 8-hour area by reducing the 1-hour budget proportional to the population of the 8-hour area (*i.e.*, 8-hour budget = 1-hour budget × 8-hour area population / 1-hour area population). EPA does not agree that this method would necessarily produce an appropriate proxy budget, because such a calculation may not accurately reflect the portion of the 1-hour SIP budget that applies for the geographic area covered by the 8-hour standard. Furthermore, emissions are not directly proportional to population but also depend on travel distances, speeds, and fleet characteristics, all of which may differ greatly among counties within one nonattainment area.

Where the 8-hour area is larger than the 1-hour area (Scenario 3), one commenter suggested that EPA should allow conformity to be demonstrated if the entire 8-hour area can meet the 1-hour budget. EPA did not propose this option in the November 2003 proposal because we do not believe that it would be possible for a larger 8-hour area to meet a 1-hour budget for a smaller area. However, EPA believes that if this case does occur in practice, such an area could demonstrate conformity for the 8-hour standard by completing the budget test with the 1-hour budget for the entire 8-hour nonattainment area. Although this case is not explicitly addressed in the regulatory text for today's final rule, if an 8-hour area that is larger than the 1-hour area meets its 1-hour SIP budgets, it would satisfy the requirements of § 93.109(e)(2)(iii). It would meet the budget test in (A) of this paragraph, and it would implicitly show that the interim emissions test(s) in (B) of this paragraph had been met.

Several commenters requested clarification that all of the test options remain available in subsequent conformity determinations until adequate or approved budgets for the 8-hour standard are in place. Though today's final rule does not offer the full range of options proposed, areas will still evaluate how to apply the budget test using 1-hour SIP budgets with each new conformity determination. In addition, the consultation process will be used to decide details for how to apply the interim emissions tests where the 8-hour boundary is larger than or partially overlaps with the 1-hour boundary (Scenario 4). Until 8-hour ozone budgets are available, areas do have the option to apply these tests as appropriate in any subsequent conformity determinations regardless of how the test was applied in a prior conformity determination.

The final rule also gives flexibility for how the interim emissions tests are applied in Scenario 3 and 4 areas. EPA is finalizing the budget test plus interim emissions tests either for:

- The whole area to be covered by an 8-hour SIP,
- the portion not covered by the 1-hour budget, or
- the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where 1-hour SIP budgets are established for each state in a multi-state nonattainment area.

EPA originally proposed that these areas would meet the interim emissions tests for the whole area, or the budget test for the 1-hour portion plus the interim emissions tests for the remainder. Though we did not specifically propose that areas would use the budgets plus the interim emissions tests for the entire area, we did propose that areas could meet the interim emissions tests for the whole area. Today's final rule includes this option because EPA now believes that, in most cases, the budgets must be used, but that offering a choice where possible with regard to the interim tests provides some flexibility for areas where they are also required. This option is a logical outgrowth of the proposal and comments received regarding the use of budgets. In addition, because many commenters supported the use of interim reduction tests by themselves for the whole area, EPA believes there is support for this option in conjunction with the 1-hour SIP budgets prior to 8-hour SIPs being established. Finally, as described above, EPA is finalizing a third interim

emissions test option for multi-state nonattainment areas with separate 1-hour SIP budgets, due to comments received from such areas.

One commenter raised questions about the situation where an existing 1-hour ozone nonattainment or maintenance area can demonstrate conformity, but the new 8-hour counties within the same 8-hour nonattainment area cannot. In this general case, the commenter believed that the 1-hour portion of the 8-hour ozone nonattainment area should be able to proceed with projects that will be implemented in the 1-hour portion even though the new 8-hour portion of the area fails to demonstrate conformity.

EPA does not agree. As described in Section III., during the one-year conformity grace period, conformity using the appropriate 1-hour ozone conformity test applies only in 1-hour nonattainment and maintenance areas. Once the grace period for the 8-hour standard expires and the 1-hour standard is revoked, however, the 1-hour ozone standard and conformity requirements for that standard no longer apply. At that time, new 8-hour ozone nonattainment areas (including the previous 1-hour area or portions thereof) must demonstrate conformity for the entire 8-hour area or the area will lapse. Therefore, EPA has not changed the final rule to address this comment. However, EPA will elaborate how 8-hour conformity determinations in multi-jurisdictional areas with existing 1-hour SIP budgets in implementation guidance. Please *see* Section I.B.2. of today's final rule for more information about EPA's conformity website.

Finally, some commenters supported the use of 1-hour SIP budgets based on legal rationale with which EPA disagrees. First, commenters stated that the Clean Air Act does not allow existing approved budgets for any pollutant or standard to be waived. Second, commenters stated that all elements of a SIP, including 1-hour budgets, remain enforceable until revisions are submitted by the state and approved by EPA as satisfying the requirements of Clean Air Act sections 110(k) and (l). EPA agrees that 1-hour ozone budgets should be used for 8-hour ozone conformity, but disagrees with these legal arguments. In section 109(d)(1) of the Clean Air Act, Congress directed EPA to review the standards every 5 years and ''make such revisions in such criteria and standards and promulgate such new standards * * *.'' EPA interprets ''make such revisions in * * * standards'' to mean that EPA has the authority to replace one standard with another, and that implicit in this authority is the authority to revoke a standard. Once a standard is revoked, although control measures remain in a SIP the budgets for that standard are no longer in force for conformity purposes because areas are not required to conduct conformity determinations for such standards. Therefore, EPA does not agree that the 1-hour ozone budgets would automatically still apply for 8-hour conformity purposes, nor that section 110(k) and (l) requirements would have to be met before areas stopped using these budgets for conformity purposes. Section 176(c)(5) of the Act terminates conformity for the 1-hour standard at revocation. Conformity for the 8-hour standard begins one year after designation, but the SIP contains no budgets for the 8-hour standard until 8-hour SIPs are submitted. EPA believes that the remaining 1-hour budgets will generally represent the best approximation of future 8-hour budgets and thus should be used for 8-hour conformity in most cases, but does not agree that they must always be used as a legal matter as suggested by the commenter.

Third, commenters argued that EPA's previous statement in the preamble to the August 15, 1997 conformity rule supports their view that 1-hour SIP budgets in approved SIPs must be used for conformity determinations under the 8-hour standard. They quoted, ''EPA does not believe that it is legal to allow a submitted SIP to supersede an approved SIP for years addressed by the approved SIP * * *. Clean Air Act section 176(c) specifically requires conformity to be demonstrated to approved SIPs. SIP revisions that EPA has approved under Clean Air Act section 110 are enforceable and cannot be relieved by a submission, even if that submission utilizes better data.'' (62 FR 43783). EPA does not agree that this quote is relevant, as we are not discussing submitted budgets that will replace the approved 1-hour ozone budgets. This language must be interpreted in context as referring to SIP revisions for the same applicable standard as the existing SIP.

Furthermore, EPA does not agree that Clean Air Act section 176(c)(2)(A) requires the use of 1-hour ozone budgets for conformity under the 8-hour standard. This section requires that emissions from the planned transportation plan and TIP must be consistent with emissions in the applicable SIP, but a 1-hour ozone SIP ceases to be the applicable SIP once the 1-hour standard is revoked. The 8-hour SIP, once available, will be the applicable SIP for conformity determinations under the 8-hour ozone standard. Instead of relying on Clean Air Act section 176(c)(2)(A), EPA believes the 1-hour budgets must be used where possible in 8-hour areas because their use best meets the requirements of 176(c)(1)(A) and (B) for the 8-hour standard.

VII. Regional Conformity Tests in $PM_{2.5}$ Areas

A. Description of Final Rule

Today's final rule requires that the budget test be used to complete a regional emissions analysis once a $PM_{2.5}$ SIP is submitted with budget(s) that EPA has found adequate or approved. Although the first $PM_{2.5}$ SIP may be an attainment demonstration, $PM_{2.5}$ nonattainment areas ''are free to establish, through the SIP process, a motor vehicle emissions budget [or budgets] that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emissions budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress towards attainment.'' (August 15, 1997, 62 FR 43799). To be approvable, such a SIP would include inventories for all emissions sources and meet other SIP requirements. EPA encourages nonattainment areas to develop their $PM_{2.5}$ SIPs in consultation with federal, state, and local air quality and transportation agencies as appropriate.

Today's final rule also requires that $PM_{2.5}$ nonattainment areas meet one of the following interim emissions tests for conformity determinations conducted before adequate or approved $PM_{2.5}$ SIP budgets are established:

- The build-no-greater-than-no-build test, or
- the no-greater-than-2002 emissions test.

The rule allows $PM_{2.5}$ nonattainment areas to choose between the two interim emissions tests each time that they determine conformity during this period. For example, an area may use the build-no-greater-than-no-build test in its first conformity determination for the $PM_{2.5}$ standard and then use the no-greater-than-2002 emissions test in a subsequent conformity determination. However, under this final rule, the same test must be used for each analysis year in a given conformity determination. In other words, an MPO may not use the build-no-greater-than-no-build test in one analysis year and the no-greater-than-2002 test in another analysis year for the same conformity determination. As noted in Section V. with respect to certain ozone areas, to do otherwise

would be unnecessarily complicated and would imply that one test used consistently for all years might not demonstrate conformity. The interagency consultation process should be used to determine which test is appropriate. EPA concludes that for reasons similar to those described for 8-hour ozone areas classified marginal and subpart 1 areas, conformity is demonstrated if the projected transportation system emissions reflecting the proposed plan or TIP (build) are less than or equal to either the emissions from the existing transportation system (no-build) or the level of motor vehicle emissions in 2002.

During the time period before a SIP is submitted and budgets are found adequate or approved, regional emissions analyses will be completed at a minimum for directly emitted $PM_{2.5}$ from motor vehicle tailpipe, brake wear, and tire wear emissions, as described in Section VIII. This section also provides information on EPA's further consideration of $PM_{2.5}$ precursors in conformity analyses. Sections IX. and X. describe situations under which regional emissions analyses would also include direct $PM_{2.5}$ emissions from re-entrained road dust and construction-related dust.

The consultation process should be used to determine the models and planning assumptions for completing any regional emissions analysis consistent with related requirements, as required by § 93.105(c)(1)(i). See the regulatory text in § 93.109(i) for a general overview of when the budget test and interim emissions tests apply in $PM_{2.5}$ areas, and § 93.119(e) for a description of the interim emissions tests for $PM_{2.5}$ nonattainment areas.

B. Rationale and Response to Comments

The final rule addresses the concerns of many stakeholders by providing flexibility before adequate or approved $PM_{2.5}$ SIP budgets are established. EPA received a number of comments on this section of the proposal. Most of the commenters supported the proposal to allow areas to choose between the two interim emissions tests. These commenters indicated that having a choice provided appropriate flexibility for local areas to tailor conformity requirements. One commenter stated that the interagency consultation process should be used to select the interim emissions test to be used in the nonattainment area.

EPA agrees with these commenters. As described in the proposal, EPA has previously determined that only ozone and CO areas of higher classifications are required to satisfy both statutory requirements that transportation activities not cause or contribute to violations of the standards or delay attainment (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)) (January 11, 1993 proposed rule, 58 FR 3782–3783). EPA continues to believe that Clean Air Act section 176(c)(3)(A)(iii) does not apply to any other areas, including $PM_{2.5}$ areas; only Clean Air Act section 176(c)(1)(B) applies to these areas. To that end, the conformity rule currently allows many areas to conform based on only one interim emissions test if transportation emissions are consistent with current air quality expectations, rather than having to complete two tests and contribute further reductions toward attainment. Today's final rule continues to apply this same test structure and rationale to $PM_{2.5}$ areas. EPA also agrees that an area's interagency consultation process provides an appropriate forum for determining which of the two interim emissions tests should be used in conformity determinations.

Some commenters recommended that $PM_{2.5}$ nonattainment areas be required to pass both interim emissions tests prior to SIP budgets being found adequate or approved, for a variety of reasons. These commenters noted that it is possible that an area could pass the no-greater-than-2002 test, but fail the build-no-greater-than-no-build test. According to the commenter, failing the build-no-greater-than-no-build test could indicate increasing emissions and be inconsistent with Clean Air Act section 176(c)(1) because any increased emissions could cause or contribute to new violations, worsen existing violations or delay timely attainment of the air quality standard. In addition, two other commenters recommended that EPA require both interim emissions tests in areas with the more serious $PM_{2.5}$ nonattainment problems because these areas should be required to meet more stringent conformity tests. Three additional commenters indicated that both interim emissions tests should be required because this is the most conservative approach to ensure protection of public health, that it would reduce transport of emissions and it would maintain progress toward meeting the standard. One of these commenters indicated that the build-no-greater-than-no-build test requires that total emissions be less than a no-build scenario and the no-greater-than-2002 test prevents increases above a historical level of emissions; therefore, both tests should be applied.

EPA disagrees with the assertion that in order to demonstrate conformity during the time period before $PM_{2.5}$ budgets are found adequate or are approved an area must pass both interim emissions tests. As described above, EPA has previously determined that only ozone and CO areas of higher classifications are required to satisfy both statutory requirements that transportation activities not cause or contribute to violations of the standards or delay attainment (Clean Air Act section 176(c)(1)(B)) and that such activities contribute to annual emissions reductions (Clean Air Act section 176(c)(3)(A)(iii)) (January 11, 1993 proposed rule, 58 FR 3782–3783). EPA continues to believe that either of the two interim emissions tests are sufficient to meet Clean Air Act section 176(c)(1)(B) provisions. As noted by these commenters an area could pass only the build-no-greater-than-no-build test and fail the no-greater-than-2002 test and this would allegedly indicate increasing emissions which could cause new violations, worsen existing violations or delay timely attainment of the standard. EPA recognizes that meeting only the build-no-greater-than-no-build test is a possible outcome in some areas; however, as EPA stated in the section of the preamble to the November 24, 1993 final transportation conformity rule that addressed requirements for NO_2 and PM_{10} areas during the time before a SIP was submitted, ''The build/no-build test is consistent with the interim requirements for ozone and CO areas and sufficient to ensure that the transportation plan, TIP or project is not itself causing a new violation or exacerbating an existing one.'' (58 FR 62197)

Conversely, some areas may fail the build-no-greater-than-no-build test and pass only a no-greater-than-2002 test. EPA believes that this would also be an acceptable outcome because it would ensure that emissions from on-road mobile sources are no greater than they were during the 2002 baseline year that is used for SIP planning purposes under the new standards. If future on-road emissions do not increase above their base year levels, EPA believes that new violations will not be created, existing violations will not be made worse and timely attainment will not be delayed. This is consistent with the approach applied to emissions in PM_{10} and NO_2 areas in the preamble to the January 11, 1993 notice of proposed rulemaking for the transportation conformity rule. Specifically, in that preamble EPA

stated that, ''* * * EPA believes that preventing emissions from increasing above 1990 levels would be sufficient to prevent the exacerbation of existing violations during the interim period.'' (58 FR 3783).

With regard to the recommendations that we require both interim emissions tests based either on the severity of an area's nonattainment problem or on the conservative nature of requiring both tests, EPA is not accepting either recommendation. As stated above, EPA continues to believe that either test is sufficient to meet the requirements of Clean Air Act section 176(c)(1)(B) which applies to $PM_{2.5}$ nonattainment areas. Additionally, EPA intends to designate all $PM_{2.5}$ nonattainment areas under subpart 1 of the Clean Air Act. Subpart 1 does not mandate a classification scheme for nonattainment areas based on the severity of an area's air quality problem. Therefore, there is no basis for EPA to determine in this rulemaking what would constitute a serious $PM_{2.5}$ nonattainment problem and require both interim emissions tests in such areas. Areas should use the interagency consultation process to determine which of the two tests is most appropriate in their area. Although areas may voluntarily choose to perform both interim emissions tests during the time before a SIP is submitted and budgets are found adequate or approved if a conservative approach is desired, they are not required to do so. EPA believes that areas should make their own decisions on how conservative to be prior to SIP adoption so long as they meet the minimum requirements for conformity.

One commenter recommended that only the build-no-greater-than-no-build test be made available to $PM_{2.5}$ areas because it shows improvements resulting from the transportation plan and TIP. This commenter was concerned that the no-greater-than-2002 emissions test is not appropriate in $PM_{2.5}$ areas because re-entrained road dust is dependent on VMT and future year emissions will always be greater than 2002 emissions when dust emissions increases are included. EPA has not changed the rule in response to this comment.

First, because EPA believes that some $PM_{2.5}$ areas may be able to use the no-greater-than-2002 test successfully, EPA does not want to require that all areas must use the build-no-greater-than-no-build test. EPA believes that areas should have a choice of the two interim emissions tests since EPA concludes that both tests allow areas to demonstrate that they meet the requirements of Clean Air Act Section 176(c)(1)(B).

Second, while some PM_{10} areas experienced difficulties passing the baseline year test, it is not certain that $PM_{2.5}$ areas will experience the same difficulty. Road dust represents a much smaller fraction of total $PM_{2.5}$ mass than of PM_{10} because most road dust particles are larger than 2.5 microns. Also, as stated in Section IX. of today's notice, EPA is finalizing a provision that only requires re-entrained road dust to be included in conformity determinations before $PM_{2.5}$ SIP budgets are available if EPA or the state air agency makes a finding that road dust is a significant contributor to an area's $PM_{2.5}$ nonattainment problem. Therefore, not all areas will be required to include road dust in conformity determinations initially. For areas where it is determined that road dust is a significant contributor to the nonattainment problem and therefore must be included in conformity determinations, EPA will be issuing future guidance on how to quantify more appropriately road dust emissions for purposes of conducting regional emissions analyses.

Another commenter suggested that neither of the interim emissions tests should be required before a SIP is submitted and that mobile sources should not be targeted when they may not be the source of an area's $PM_{2.5}$ problem. EPA disagrees. Clean Air Act section 176(c)(6) requires that conformity apply in new nonattainment areas one year after the effective date of the nonattainment designation, even prior to the submission of SIPs establishing budgets for a particular pollutant. Clean Air Act section 176(c)(4) provides EPA with the authority to establish conformity tests that will ensure that transportation plans, programs and projects do not result in new violations of an air quality standard, worsen an existing violation or delay timely attainment of a standard during that time period. While the contribution of mobile sources to PM2.5 nonattainment problems is likely to vary from area to area, on-road sources are likely to make some contribution in all areas. Therefore, EPA believes that in order to protect public health it is both required by the Clean Air Act and necessary for PM2.5 areas to begin demonstrating conformity using appropriate interim emissions tests once conformity applies, before adequate or approved SIP budgets are established.

One commenter expressed support for the use of the budget test particularly in maintenance areas. The commenter noted that the budget test provides the area with a high degree of confidence that it will remain in attainment if emissions are held to the SIP budget levels. EPA agrees that once a SIP is submitted and budgets are found adequate or approved, the budget test is appropriate for meeting statutory requirements. Section 176(c)(2)(A) requires, in part, that a transportation plan or TIP may only be found to conform if a final determination has been made that emissions expected from the implementation of the plan and TIP are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan.

A number of comments were received on the suggestion that areas could submit early SIP budgets. One commenter supported this suggestion, while several other commenters were opposed to the suggestion. These commenters opposing early budgets believed that: Budgets should be developed as part of an area's attainment demonstration with adequate interagency consultation recognizing the complexities of the $PM_{2.5}$ problem; early budgets could isolate motor vehicle emissions in advance of considering reductions from other source categories; and the idea of developing these budgets in advance of the attainment demonstration is flawed in principle and would encourage incomplete air quality planning and delay the overall SIP development process.

EPA believes that commenters misunderstood the proposal, and we continue to believe that it is acceptable for areas to establish early motor vehicle emission budgets through the SIP process at an area's discretion. If an area chooses to prepare an early SIP, it must develop that SIP in consultation with EPA and state, local and federal transportation and air quality planners. To be approvable, such a SIP would have to include inventories for all source sectors and meet other SIP requirements. While these early SIPs would have to show some progress toward attainment, it is not a requirement that all of the reductions would come from on-road motor vehicles. It is not EPA's intention that motor vehicle emissions be solely controlled in a voluntary early SIP, but rather, to highlight that some areas may find it beneficial to establish early budgets by selecting appropriate controls on a range of sources instead of relying on one of the interim emissions tests to demonstrate conformity for $PM_{2.5}$. EPA agrees that $PM_{2.5}$ nonattainment is a complex issue. However, some areas will have

information (*e.g.*, air quality studies, modeling results) to guide them in the development of an early SIP, if desired.

Furthermore, EPA does not agree that the idea of early SIPs is flawed or that it will result in incomplete air quality planning or delay required SIPs. A voluntary early SIP does not relieve an area of its obligation ultimately to submit other required SIPs in a timely manner (*e.g.*, an attainment demonstration); therefore, an early SIP should not lead to incomplete air quality planning in the long run. An area that decides to submit an early SIP should recognize that it must still comply with submission dates for other applicable SIP requirements.

One commenter stated that early $PM_{2.5}$ SIPs may include some quantification of direct $PM_{2.5}$ emissions, but that these preliminary quantifications in emission inventories, which are not explicitly intended to be SIP budgets, should not trigger additional conformity requirements. EPA does not anticipate such early SIP submissions to cause confusion in the conformity process, as suggested by this commenter.

EPA believes that only control strategy SIPs establish motor vehicle emission budgets for conformity purposes. Section 93.101 of the conformity rule defines a control strategy SIP as an implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy Clean Air Act requirements for demonstrations of reasonable further progress and attainment. If the early SIP described by the commenter is submitted to satisfy different Clean Air Act requirements, it would most likely not establish budgets or trigger additional conformity requirements. It should be noted that § 93.105(b)(2) of the conformity rule requires that the interagency consultation process be used during the development of an area's SIP. Therefore, the MPO should be aware of any SIPs that are to be submitted that will establish budgets for future conformity determinations.

C. Comments Not Related to the Proposal

One commenter offered suggestions for alternate interim emissions tests for $PM_{2.5}$ areas. The commenter believed that $PM_{2.5}$ nonattainment areas will need reductions from on-road sources even before a SIP is established in order to attain the air quality standard. The commenter argued that EPA has the authority to require reductions in all nonattainment areas before a SIP is submitted under Clean Air Act Section 176(c)(1)(A), which requires conformity to the purpose of the SIP.

The commenter described an alternate interim emissions test that should be used prior to a SIP being submitted and budgets being found adequate or approved. Specifically, the transportation agency would prepare a motor vehicle emissions trends analysis for the 20-year planning horizon based on the current transportation plan. The transportation agencies would then assess the emissions reductions that could be achieved by the implementation of facilities, services and economic incentives. Based on this assessment the area would select measures to optimize the emissions reductions from the transportation sector towards attainment. The consultation process would be used to establish an emissions reduction curve that would serve as a conformity benchmark until a SIP is developed and submitted to EPA. The commenter believes such a test would identify the range of emissions reductions available from the transportation sector, yield valuable information for the development of a SIP and establish a framework for interagency collaboration to identify emissions reductions that could be implemented before adoption of a SIP containing motor vehicle emission budgets.

EPA is not changing the final rule in response to this comment. EPA agrees that the process described by the commenter may yield valuable information for the development of the $PM_{2.5}$ SIP for an area, and areas could elect to use it at their discretion for that purpose. However, EPA continues to believe that only Clean Air Act section 176(c)(1)(B) applies to $PM_{2.5}$ nonattainment areas prior to the time that a SIP is submitted and budgets are found adequate or approved, since section 176(c)(2)(A) requiring compliance with budgets only applies once a SIP is established. Although section 176(c)(1)(A) does require conformity to the purposes of a SIP, where a SIP has not been submitted to establish budgets, EPA does not believe this provision would mandate a test such as that suggested by the commenter.

As discussed above, EPA has concluded that use of either existing interim emissions test is sufficient to meet the requirements of section 176(c)(1)(B) in $PM_{2.5}$ areas. Moreover, the SIP process, which includes consultation with transportation agencies, is the appropriate venue for deciding on SIP control strategies for attaining the $PM_{2.5}$ air quality standard. Requiring a test such as the one described by the commenter would in effect extend the provisions of Clean Air Act section 176(c)(3)(A)(iii) requiring emissions reductions to $PM_{2.5}$ nonattainment areas as a mandatory matter, which is inconsistent with the statute.

The same commenter also recommended a change to the build-no-greater-than-no-build test for $PM_{2.5}$ areas. Specifically, the commenter recommended that emissions from the build scenario be compared to both the no-build scenario as is currently required and also to emissions resulting from implementing the projects in the current fiscally constrained transportation plan. The commenter believes that it is reasonable to expect that projects in the current plan would be implemented because of past political decisions, resource commitments and existing emissions analyses. Therefore, the commenter believes that area should examine the consequences of changing the current transportation plan.

EPA does not agree with requiring this type of test in $PM_{2.5}$ nonattainment areas. EPA believes that the current build/no-build test alone, as used for other pollutants and standards, is sufficient and more appropriate for meeting Clean Air Act section 176(c)(1)(B) requirements, which are intended to ensure that the emissions produced by an area's existing and planned transportation system are consistent with air quality goals. In contrast, the commenter's suggestion for redefining the build and no-build scenarios would focus conformity determinations on the specific projects and ongoing transportation decisions that are reflected within plans and TIPs. EPA believes that the transportation planning process is the more appropriate forum for deciding which specific projects are necessary to meet an area's transportation needs. As long as the statutory conformity requirements are met through the current form of the build/no-build test, EPA believes that additional tests such as the commenter suggested are not necessary to ensure that Clean Air Act requirements are met. Therefore, EPA is not including this suggested test in today's final rule.

VIII. Consideration of Direct $PM_{2.5}$ and $PM_{2.5}$ Precursors in Regional Emissions Analyses

A. Description of Final Rule

Today's final rule requires that all regional emissions analyses in $PM_{2.5}$ nonattainment and maintenance areas consider directly emitted $PM_{2.5}$ motor

vehicle emissions from the tailpipe, brake wear, and tire wear. The regulatory text can be found in § 93.102(b)(1). Sections IX. and X. provide information on when re-entrained road dust and construction-related dust must also be included in $PM_{2.5}$ conformity analyses.

To calculate emissions factors for direct $PM_{2.5}$ from motor vehicles all states except California would use the latest EPA-approved motor vehicle emissions factor model (currently MOBILE6.2). $PM_{2.5}$ nonattainment and maintenance areas in California would use EMFAC2002 or a more recently EPA-approved model. MOBILE6.2 and California's EMFAC2002 are designed to generate emissions factors for direct $PM_{2.5}$ as well as other emissions from on-road vehicles in the same modeling run.

EPA is not finalizing any requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations at this time. EPA will be proposing a broader $PM_{2.5}$ implementation rule to seek comment on options for addressing $PM_{2.5}$ precursors in the New Source Review program and in SIP planning activities such as reasonable further progress plans, attainment demonstrations, reasonably available control technology (RACT) requirements, and reasonably available control measure (RACM) analyses. EPA believes that it would be inappropriate to select an option for addressing $PM_{2.5}$ precursors in transportation conformity determinations prior to considering the precursor options in the $PM_{2.5}$ implementation rule. EPA plans to promulgate conformity requirements that address precursors prior to $PM_{2.5}$ designations being effective.

In the November 5, 2003 proposal, EPA presented several conformity options for $PM_{2.5}$ precursors for comment. Specifically, EPA proposed to add potential transportation-related $PM_{2.5}$ precursors—NO_X, VOCs, sulfur oxides (SO_X), and ammonia (NH_3)—for consideration in the conformity process. Under the proposal, a regional emissions analysis would be required for a given precursor if the $PM_{2.5}$ SIP established an adequate or approved budget for that particular precursor.

EPA also proposed two options for addressing how the various $PM_{2.5}$ precursors would be considered in conformity determinations conducted before adequate or approved $PM_{2.5}$ SIP budgets are established. EPA proposed regulatory text in §§ 93.102(b)(2) and 93.119(f) for both of these options.

The first proposed option would require regional emissions analyses for NO_X and VOC precursors in all areas, unless the EPA Regional Administrator or the state air agency makes a finding that one or both of these specific precursors are *not a significant contributor* to the $PM_{2.5}$ air quality problem in a given area. Regional emissions analyses would not be required for SO_x and NH_3 before an adequate or approved SIP budget for such precursors is established, unless EPA or the state makes a finding that on-road emissions of one or both of these precursors *is a significant contributor.*

EPA's second option would only require regional emissions analyses for one or more $PM_{2.5}$ precursors (*i.e.,* NO_X, VOC, SO_X and NH_3) before adequate or approved $PM_{2.5}$ SIPs have been established if EPA or the state makes a finding that one or more of these precursors *are significant contributors* to the $PM_{2.5}$ air quality problem in a given area.

As stated above, EPA intends to finalize the transportation conformity rule's $PM_{2.5}$ precursor requirements after further consideration through the $PM_{2.5}$ implementation rule and before $PM_{2.5}$ designations become effective. By finalizing the $PM_{2.5}$ precursor requirements before the effective date of the designations, areas will be fully aware of the conformity requirements at the start of the one-year $PM_{2.5}$ conformity grace period.

Although today's final rule does not address $PM_{2.5}$ precursors, conformity implementers can begin preparing for $PM_{2.5}$ conformity now, because this final rule includes the $PM_{2.5}$ regional conformity tests that apply for transportation plan and TIP conformity determinations that occur before and after $PM_{2.5}$ SIPs are established. In addition, the final rule and the existing conformity rule provide all other requirements for $PM_{2.5}$ determinations. For example, an MPO might choose to begin the no-greater-than-2002 test, as described in Section VII., prior to the release of final $PM_{2.5}$ precursor conformity requirements. Transportation and emissions modeling for $PM_{2.5}$ areas could also be prepared based on today's final rule, if desired. This is because VMT and speed estimates are based on the existing conformity rule's requirements, and can be made without regard to which precursors apply. Furthermore, MOBILE6.2 and EMFAC2002 emissions factor models generate direct $PM_{2.5}$ and precursor emissions factors from on-road vehicles at the same time in the same modeling run. Once $PM_{2.5}$ precursor requirements are finalized, $PM_{2.5}$ areas can document in conformity determinations that the applicable interim emissions test is met for direct $PM_{2.5}$ and any relevant precursors that apply.

Finally, EPA is not re-opening the comment period on the proposed transportation conformity requirements for addressing $PM_{2.5}$ precursors in transportation conformity determinations. EPA will address all of the comments received on the November 2003 proposal's $PM_{2.5}$ precursor options when we finalize these requirements, as described above.

B. Rationale and Response to Comments

EPA received a number of comments on this portion of the proposal. Most commenters supported the requirement that direct $PM_{2.5}$ emissions from the tailpipe and brake and tire wear be addressed in all regional emissions analyses. EPA believes that it is important to address direct $PM_{2.5}$ in conformity determinations because it is an important contributor to the air quality problem in these nonattainment areas and because of public health concerns with exposures to fine particles. A few commenters indicated that these direct emissions should only be required to be included in regional emissions analyses before a SIP is submitted if a finding of significance is made. One of these commenters also submitted the results of an emissions analysis that he prepared. The results of the analysis showed direct $PM_{2.5}$ emissions from on-road mobile sources (including re-entrained road dust) compared to emissions of $PM_{2.5}$ precursors and, in particular, emissions of NO_X. One commenter indicated that her agency would have data available to make findings of significance. EPA believes that it would be inappropriate to require a significance finding before direct emissions from motor vehicles can be included in regional emissions analyses, prior to the submission of a SIP for an area.

EPA believes that areas must include direct $PM_{2.5}$ emissions, including tailpipe emissions and emissions from brake and tire wear, in conformity determinations prior to the time that SIPs are submitted and budgets are found adequate. Clean Air Act Section 176(c)(1)(B) requires that activities not cause or contribute to any new violation of the air quality standard, increase the frequency or severity of any existing violation of the standard or delay timely attainment or any required interim emission reductions or other milestones. In order for an area to demonstrate compliance with the requirements of Clean Air Act Section 176(c)(1)(B) before a SIP is established, the area

must, at a minimum, conduct a regional emissions analysis for direct $PM_{2.5}$ emissions from motor vehicles. EPA anticipates that in most nonattainment and maintenance areas direct $PM_{2.5}$ emissions will be an important contributor to the $PM_{2.5}$ air quality problem. For these reasons, EPA is requiring that transportation conformity determinations consider direct $PM_{2.5}$ emissions. As noted above, EPA will finalize rules on how to account for $PM_{2.5}$ precursors, after further consideration in the context of EPA's broader $PM_{2.5}$ implementation strategy. See Section IX. of this notice for more information on $PM_{2.5}$ requirements for re-entrained road dust.

One commenter indicated that EPA's insignificance policy should apply to $PM_{2.5}$ emissions. EPA agrees with this commenter. The insignificance policy may be applied to direct $PM_{2.5}$ emissions during the period after a SIP is submitted for the area. If the SIP for the area demonstrates that direct $PM_{2.5}$ emissions from on-road mobile sources, including dust where relevant, do not need to be constrained in order to ensure expeditious attainment of the $PM_{2.5}$ standard, the requirement for a regional emissions analysis for direct $PM_{2.5}$ would no longer apply. See Section XXIII. for more details on requirements for demonstrating that motor vehicle emissions are insignificant contributors to an area's air quality problem.

One commenter recommended that conformity tests for direct $PM_{2.5}$ be done collectively, meaning that one budget test or interim emissions test be done for all of the relevant types of direct $PM_{2.5}$. EPA agrees with the commenter. EPA expects all $PM_{2.5}$ nonattainment and maintenance areas to complete the required regional emissions analyses for direct $PM_{2.5}$ by examining all of the relevant types of direct $PM_{2.5}$ in one analysis rather than separate analyses for each type of particle: Therefore, the analysis for direct $PM_{2.5}$ must include:

- Tailpipe exhaust particles,
- Brake and tire wear particles,
- Re-entrained road dust, if before a SIP is submitted EPA or the state air agency has made a finding of significance or if the applicable or submitted SIP includes re-entrained road dust in the approved or adequate budget, and
- Fugitive dust from transportation-related construction activities, if the SIP has identified construction emissions as a significant contributor to the $PM_{2.5}$ problem.

See Sections IX. and X. for more information on requirements for re-entrained road dust and fugitive dust from construction activities.

Three commenters expressed concern over the need to use MOBILE6.2 to estimate $PM_{2.5}$ motor vehicle emissions. One of the three was concerned about the accuracy of the modeling tools. Another was concerned about unexpected problems occurring because areas lack experience in using MOBILE to evaluate particulate matter levels.

EPA understands the concerns that these areas have expressed. Since the conformity proposal was published in November 2003, EPA has released MOBILE6.2. MOBILE6.2 is based on the latest available information concerning vehicle emissions and is therefore the best available tool at this time for calculating on-road emissions of direct $PM_{2.5}$ (*e.g.,* tailpipe emissions and brake and tire wear). The **Federal Register** notice announcing the release of the model was published on May 19, 2004 (69 FR 28830). EPA released SIP and conformity policy guidance on the use of MOBILE6.2 on February 24, 2004, entitled, ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity.'' EPA will also be releasing technical guidance on the use of the MOBILE6.2 model in the future. Information on training in the use of MOBILE6.2 and related policy memoranda are available on EPA's MOBILE Web site at *http://www.epa.gov/otaq/m6.htm.* EPA believes there is adequate time for new areas to gain MOBILE experience and conduct conformity analyses for the $PM_{2.5}$ standard, before the end of the one-year conformity grace period for that standard.

IX. Re-entrained Road Dust in $PM_{2.5}$ Regional Emissions Analyses

A. Description of Final Rule

With today's action, EPA is finalizing the first of the two proposed options for addressing re-entrained road dust in conformity analyses prior to adequate or approved $PM_{2.5}$ SIP budgets. During this time period, re-entrained road dust will only be included in regional emissions analyses if the EPA Regional Administrator or state air quality agency determines that re-entrained road dust *is a significant contributor* to the $PM_{2.5}$ regional air quality problem. In other words, $PM_{2.5}$ areas can presume that re-entrained road dust is not a significant contributor and not include road dust in $PM_{2.5}$ transportation conformity analyses prior to the SIP, unless EPA or the state finds road dust significant. Re-entrained road dust is granular material released into the atmosphere as a result of motor vehicle activity on paved and unpaved roads.

EPA is applying this approach regardless of whether a $PM_{2.5}$ area is also a PM_{10} nonattainment or maintenance area. Therefore, even if the $PM_{2.5}$ area is also a PM_{10} area, the state or MPO can presume that re-entrained road dust is not a significant contributor and exclude it from $PM_{2.5}$ transportation conformity analyses prior to the SIP, unless EPA or the state finds road dust significant for $PM_{2.5}$. Regulatory text for this rule change is in §§ 93.102(b)(3) and 93.119(f).

An EPA or state air agency finding of significant re-entrained road dust emissions (a ''finding of significance'') would be based on a case-by-case review of the following factors: the contribution of road dust to current and future $PM_{2.5}$ nonattainment; an area's current design value for the $PM_{2.5}$ standard; whether control of road dust appears necessary to reach attainment; and whether increases in re-entrained dust emissions may interfere with attainment. Such a review would include consideration of local air quality data and/or air quality or emissions modeling results. Today's action with respect to $PM_{2.5}$ road dust is consistent with EPA's existing insignificance policy for all areas as described in Section XIV.B.

A finding of significance should be made only after discussions within the interagency consultation process for the $PM_{2.5}$ nonattainment area. These discussions should include a review of the data being considered. Interagency consultation will also ensure that all of the relevant agencies are aware that such a finding is being considered and is supported by the air quality information that is available. Findings of significance should be made through a letter to the relevant state and local air quality and transportation agencies, MPO(s), DOT, and EPA (in the case of a state air agency finding).

Road dust SIP emissions inventories and regional emissions analyses for conformity would be calculated using methods described in EPA's guidance entitled, ''AP–42, Fifth Edition, Volume 1, Chapter 13, Miscellaneous Sources'' (US EPA Office of Air Quality Planning and Standards; available at *http://www.epa.gov/ttn/chief/ap42/ch13/*). States and MPOs should consult with EPA before using alternative approaches, and EPA approval is needed before such approaches can be used. Details on the use of AP–42 for road dust estimation are given in ''Policy Guidance on the Use of MOBILE6.2 and the December 2003 AP–

42 Method for Re-Entrained Road Dust for SIP Development and Transportation Conformity,'' memorandum from Margo Oge and Steve Page to EPA Regional Air Division Directors, February 24, 2004 available at *http://www.epa.gov/otaq/models/mobile6/mobil6.2_letter.pdf*).

EPA notes that the absence of a finding of significance prior to the SIP should not be viewed as the ultimate determination of the significance of road dust emissions in a given area. State and local agencies may find through the SIP development process that road dust emissions are significant and should be included in the $PM_{2.5}$ SIP budget and subsequent conformity analyses, although they did not have sufficient data to support a finding prior to the development of the SIP.

As described in the November 5, 2003 proposal, EPA plans to issue guidance on how to adjust estimated $PM_{2.5}$ road dust emissions to reflect the true impact of re-entrained road dust on regional air quality. This guidance will take into account differences between road dust emissions measured near the roadway and measured on regional air quality monitors and allow states and MPOs to adjust road dust emissions estimates to reflect accurately the regional impact of these emissions. EPA plans to issue this guidance by the time final $PM_{2.5}$ designations are effective.

B. Rationale and Response to Comments

All of the commenters that directly addressed this issue supported the option of not requiring that re-entrained road dust be included in $PM_{2.5}$ conformity analyses prior to an adequate or approved SIP budget, regardless of whether the area is also a PM_{10} area. Reasons commenters stated for supporting this option included uncertainties about the role of re-entrained road dust for $PM_{2.5}$ air quality, likelihood that re-entrained dust will be dominated by larger particles, and concerns about needless expenditure of resources. As discussed in the proposal, at issue is the question of whether or not re-entrained road dust has a significant impact on $PM_{2.5}$ air quality and should be included in conformity analyses in all $PM_{2.5}$ areas. EPA believes that, unless there is already strong evidence of the importance of re-entrained road dust for $PM_{2.5}$ air quality, the proper time to make that determination is during the development of the $PM_{2.5}$ SIP.

There is still a great deal of uncertainty about the overall impact of re-entrained road dust on $PM_{2.5}$, and evidence suggests that re-entrained road dust is likely to have a relatively small impact on $PM_{2.5}$ compared to PM_{10} in general. The development of a SIP requires an in-depth review of all the available emissions and air quality data for a particular area. EPA expects that this review will resolve many of the uncertainties about the impact of re-entrained road dust on $PM_{2.5}$ in an area. However, if clear evidence of the impact of re-entrained road dust in a local area is available before the SIP is developed, the option of finding road dust significant so that it is included in conformity analyses can provide for the protection of public health and the environment in the short term. In the absence of such a finding prior to a $PM_{2.5}$ SIP, it is more productive for areas to focus control efforts on vehicle emissions that clearly contribute to the $PM_{2.5}$ air quality problem, rather than on re-entrained road dust emissions that have not been found to be significant. In addition, EPA does not believe there is compelling evidence to require that PM_{10} areas presume that re-entrained road dust will be a significant contributor to $PM_{2.5}$ air quality problems in all cases based on our current understanding and on the comments received.

Several commenters suggested that the final rule require that both EPA *and* the state make findings of significance before road dust is included in conformity analyses. EPA is not making this change to the final rule because we believe it is unnecessary given that the finding will be discussed through the interagency consultation process. The language used in the final rule for $PM_{2.5}$ road dust is consistent with how such findings for PM_{10} precursors have been implemented since the original 1993 conformity rule.

One commenter who supported the option EPA is finalizing also suggested as an alternative that re-entrained road dust be counted as part of the area source inventory not subject to transportation conformity at all. EPA disagrees. While the deposition of silt on a roadway is not necessarily completely dependent on vehicle activity, the release of that silt into the atmosphere is dependent on vehicle activity, and is therefore properly classified as an on-road mobile source emission subject to transportation conformity requirements.

Several commenters supported the future release of EPA guidance to allow road dust emissions estimates to be adjusted to reflect the true regional impact of those emissions. Several more commenters raised general concerns about the quality of methods available for estimating road dust emissions. These commenters believed that the existing methods overestimate road dust emissions. EPA agrees and believes that concerns about the inaccuracy of emission estimation methods arise from discrepancies between the observed emissions near the roadway surface and observed emissions at the regional air quality monitors. Allowing emissions estimates to be adjusted to reflect the true regional air quality impact through EPA's planned future guidance should alleviate many of these concerns. Without these adjustments, planners may not apply the proper combination of control measures on dust and vehicle emissions needed to address properly the regional $PM_{2.5}$ air quality problem. Based on observed discrepancies, EPA believes that controls on road dust would have a smaller impact on regional air quality than would initially appear based on unadjusted emissions inventories, and the Agency's planned guidance will address this issue.

Two commenters proposed that separate emission budgets be established for vehicle exhaust emissions and re-entrained road dust, rather than the current practice of including all on-road $PM_{2.5}$ emissions in one regional emissions analysis. The commenters believe that this approach would ''avoid the risk that improvements in the measurement of a poorly characterized inventory be used to offset increases in direct emissions of primary particles from combustion.'' In general, EPA believes that emissions from all motor vehicle sources should be examined in a unified manner for transportation planning and air quality planning purposes. It is also important that conformity analyses in $PM_{2.5}$ areas are consistent with how $PM_{2.5}$ SIP budgets will be developed.

As long as Clean Air Act requirements are met when all motor vehicle emissions are considered in conformity analyses, EPA does not believe it is beneficial to further constrain the transportation project or control strategy development processes of state and local governments for transportation conformity purposes. If it is determined that $PM_{2.5}$ from road dust is significant, it may prove extremely difficult to meet a separate road dust budget with any growth in VMT. Because dust and vehicle $PM_{2.5}$ both contribute to direct on-road $PM_{2.5}$ emissions levels, EPA believes it would be appropriate to treat them jointly for purposes of transportation conformity. For these reasons, EPA is not requiring separate budgets for road dust and exhaust emissions.

X. Construction-Related Fugitive Dust in $PM_{2.5}$ Regional Emissions Analyses

A. Description of Final Rule

EPA is finalizing the proposal to include construction-related fugitive dust from highway or transit projects in regional emissions analyses in $PM_{2.5}$ nonattainment and maintenance areas only if the SIP identifies construction dust *as a significant contributor* to the regional air quality problem. Construction-related fugitive dust is granular material released into the atmosphere during construction. Construction-related dust emissions would not be included in any $PM_{2.5}$ conformity analyses before adequate or approved $PM_{2.5}$ SIP budgets are established. Regulatory text is in § 93.122(f) of this final rule. This is consistent with the way construction dust is considered in the current rule for PM_{10} nonattainment and maintenance areas.

The consultation process should be used during the development of $PM_{2.5}$ SIPs when construction emissions are a significant contributor, so that these emissions are included in the SIP's motor vehicle emissions budget for conformity purposes. EPA has previously provided similar guidance to PM_{10} nonattainment and maintenance areas for PM_{10} construction-related emissions requirements.[13] See the preamble to the proposal for this final rule for further information regarding how EPA intends to implement the $PM_{2.5}$ construction dust requirement (November 5, 2003, 68 FR 62711).

Construction dust SIP emissions inventories and regional emissions analyses for conformity can be calculated using methods described in EPA's guidance entitled, ''AP–42, Fifth Edition, Volume 1, Chapter 13, Miscellaneous Sources'' (US EPA Office of Air Quality Planning and Standards; available at *http://www.epa.gov/ttn/chief/ap42/ch13/*) or locally developed estimation methods that are selected through the interagency consultation process.

In addition, EPA will allow $PM_{2.5}$ emissions to be adjusted to reflect the true impact of construction-related fugitive dust on regional air quality, as explained in Section IX. EPA will issue guidance on how to adjust estimated $PM_{2.5}$ construction dust emissions to reflect more accurately the impact of construction dust on regional air quality before EPA's final $PM_{2.5}$ nonattainment designations are effective. Under EPA's future guidance, calculated emissions could then be adjusted downward, if appropriate and necessary, to account for discrepancies based on an analysis of the relative impact of construction dust on ambient $PM_{2.5}$ concentrations as determined by regional air quality monitors and the $PM_{2.5}$ SIP's demonstration in a given area.

B. Rationale and Response to Comments

Most of the commenters who addressed this issue supported the proposal that EPA is finalizing today. Section 176(c) of the Clean Air Act requires that the air quality impacts of transportation projects be evaluated so that new violations or worsened violations do not occur and that attainment is not delayed. If emissions of fugitive dust from highway or transit project construction contribute to air quality problems in $PM_{2.5}$ areas and as a result, air quality is worsened or timely attainment is delayed, then it is appropriate to evaluate those emissions in conformity before federal funding or approval is given. Section 93.122(e) of the transportation conformity rule requires regional PM_{10} emissions analyses to include construction-related PM_{10} dust if the SIP identifies construction emissions as a contributor to the nonattainment problem.

If construction-related fugitive PM_{10} is not identified as a contributor to the air quality problem in the SIP, areas are not required to include these emissions in the regional emissions analysis for transportation conformity. The consultation process should be used to help determine whether construction dust is a significant contributor to regional air quality problems in the development of the $PM_{2.5}$ SIP, and EPA will consider the significance of construction dust in its review of the SIP submission. Today's action applies the current rule's general approach for PM_{10} areas to $PM_{2.5}$ areas.

One commenter who supported the proposal said that the determination of whether construction dust is a significant contributor to the air quality problem should consider the temporary nature of these emissions, the mitigating impact of construction dust suppression measures, and the limitations of existing fugitive dust estimation methods. EPA believes that it is appropriate to include construction dust mitigation measures required in the local area when determining the air quality significance of construction dust. The temporary nature of these emissions can only be considered if the release is so short in duration that it does not affect regional air quality. The limitations of the existing fugitive dust method described by the commenter will be addressed by allowing the adjustment of the dust emissions inventory to reflect the impact of dust on regional air quality, which will be discussed in future EPA guidance.

A smaller group of commenters opposed any inclusion of construction dust in transportation conformity analyses, citing the temporary nature of these emissions. While EPA agrees that these emissions only occur during the construction phase of a transportation project and that they may also be covered by other requirements, this is not a compelling rationale for excluding them from transportation conformity if they do have a significant impact on regional air quality. Dust from highway or transit construction projects could contribute to regional air quality problems for months or even years depending on the size of the project. Therefore, EPA has not changed the final rule in response to this comment.

Some commenters argued construction dust should not be included because it is already addressed in the nonroad or area source inventory and that different emissions models and control strategies apply to nonroad sources. Other commenters argued construction dust should not be included because VOC and NO_X emissions from construction equipment used during road construction projects are not required to be included in conformity analyses. EPA disagrees, because these factors have no bearing on whether construction dust should be included in conformity determinations. Construction dust from highway or transit projects is the direct result of decisions made during the transportation planning process and these decisions should take those emissions into account. The fact that different estimation methods and control methods are used for these emissions does not negate the connection with the transportation planning process. If construction dust is determined to be a significant contributor to the regional air quality problem, the state or MPO should make sure that only construction dust from highway and transit projects and not from other types of construction projects is included in the conformity analysis.

Several commenters argued construction dust should not be included because construction projects are separately covered by project-level and National Environmental Policy Act (NEPA) requirements. Because project-level and NEPA requirements do not

[13] October 28, 1996, memorandum entitled, ''Transportation Conformity: Regional Analysis of PM_{10} Emissions from Highway and Transit Project Construction,'' memorandum from Gay MacGregor, then-Director, Regional and State Programs Division, Office of Mobile Sources to EPA Regional Air Division Directors.

take into account other on-road sources of $PM_{2.5}$ emissions in other portions of the nonattainment or maintenance area, relying on these requirements exclusively would miss situations in which additional construction dust emissions from transportation projects worsen an existing region-wide $PM_{2.5}$ air quality problem.

A few commenters asked that full interagency consultation be required as part of the SIP development process with respect to the issue of the significance of construction dust. EPA agrees. Section 93.105(b)(1) of the conformity rule already requires that state and local transportation and air agencies, and other organizations with responsibilities for developing or implementing SIPs must consult with each other and with EPA, FHWA, and FTA field offices on the development of the SIP, transportation plan, TIP, and associated conformity determinations.

One commenter stated that emission analyses to determine if construction dust is a significant contributor to regional air quality should be required only in $PM_{2.5}$ areas for the 24-hour standard because the commenter believed that these emissions would have no effect on attainment of the annual $PM_{2.5}$ standard. EPA disagrees since it is impossible to make the determination that construction dust emissions will have no effect on attainment of the annual $PM_{2.5}$ standard in any area until a proper analysis has been done as part of the SIP development process, especially where construction activity continues for several years.

One commenter suggested that § 93.122(f)(2) should not include ''the dust producing capacity of the proposed activities'' because the commenter believes this requirement exceeds the SIP inventory requirements. EPA believes that an estimation of the dust producing capacity of the proposed transportation project is necessary in order to make a determination of the significance of construction dust on regional air quality. It is clearly possible to do this since the language in § 93.122(f)(2) is consistent with the requirement to account for construction dust for PM_{10} conformity, which has already been implemented for many years. Therefore, the final rule has not been changed in response to this comment.

One commenter stated that construction dust emissions were generally more significant than emissions of re-entrained road dust. This commenter believed that without a regulatory requirement to account for construction-related $PM_{2.5}$ emissions in all cases in conformity, effective measures to control these emissions would be inconsistent and only voluntary. As a result, this commenter recommended that construction dust emissions be considered in conformity analyses prior to the submission of an adequate $PM_{2.5}$ SIP budget. EPA believes based on the available data that construction dust will not be significant in all areas and that therefore requiring the inclusion of construction dust before it has been determined to be significant through the SIP process is unnecessary and could lead to the diversion of limited state and local resources. Furthermore, EPA did not include an option for including construction dust in all cases in the November 2003 proposal. Therefore, EPA is not changing the rule in response to this comment.

XI. Compliance With $PM_{2.5}$ SIP Control Measures

A. Description of Final Rule

The final rule requires that FHWA and FTA projects in $PM_{2.5}$ nonattainment and maintenance areas comply with the applicable SIP's $PM_{2.5}$ control measures, when such measures exist. Under the final rule, FHWA and FTA would assure implementation of a required control or mitigation measure by obtaining enforceable written commitments from the project sponsor and/or operator prior to making a project-level conformity determination. This requirement would be satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include the control measures in the final plans, specifications and estimates for the project. This final rule is consistent with a similar requirement for PM_{10} areas.

EPA notes, however, that § 93.117 is only applicable after a $PM_{2.5}$ nonattainment area has an approved $PM_{2.5}$ SIP, because the requirement is to comply with the measures in the approved $PM_{2.5}$ SIP. Today's final rule does not affect any separate state or other SIP requirements for compliance with control measures.

The purpose of a $PM_{2.5}$ control measure is to limit the amount of $PM_{2.5}$ emissions from construction activities and/or normal use and operation associated with the project. Examples of specific control or mitigation measures that may be approved into a SIP include limitations on fugitive dust during construction or street sweeping. Normal project design elements (dimensions, lane widths, materials, etc.), however, are not considered mitigation or control measures.

B. Rationale and Response to Comments

Commenters were supportive of the proposal. The purpose of conformity is to ensure that federal actions are consistent with the SIP air quality objectives. If the approved SIP includes control measures for mitigating $PM_{2.5}$ emissions from federal transportation projects, then conformity should include a written commitment from the project sponsor to include these SIP measures in the final plans, specifications, and estimates for the project. EPA believes that this requirement will help $PM_{2.5}$ areas achieve clean air by ensuring that federal projects comply with control measures that result in air quality improvements as anticipated in the SIP. Although such projects must comply with SIP requirements in any event, documenting compliance in a conformity determination adds an important enforcement tool to aid in SIP compliance.

Some commenters requested clarification that such control measures are not considered transportation control measures (TCMs) requiring timely implementation under 40 CFR 93.113. EPA is not changing the regulatory text in response to this comment. Not all control measures included in the SIP are TCMs. However, if a TCM is included in an approved $PM_{2.5}$ SIP as a $PM_{2.5}$ control measure, it must be implemented as required by the SIP and the conformity rule's timely implementation requirements. $PM_{2.5}$ SIP control measures can include many different kinds of control measures, including TCMs as defined under Clean Air Act section 108 and § 93.101 of the conformity rule. EPA believes this clarification is consistent with current practice for implementing §§ 93.117 and 93.113 requirements in PM_{10} areas.

One commenter generally supported EPA's proposal but was unsure how enforcement of $PM_{2.5}$ SIP control measures would take place within the conformity process. This commenter recommended that enforcement of $PM_{2.5}$ control measures be completed through the NEPA process, similar to the requirements for dealing with other environmental issues. EPA agrees that enforcement of $PM_{2.5}$ SIP control measures is important, but the conformity rule is the appropriate context for meeting Clean Air Act conformity requirements. If a SIP $PM_{2.5}$ control measure is not implemented, then EPA believes it would not be appropriate to make a project-level conformity determination. Finally, it is

EPA's experience that implementation of § 93.117 for PM_{10} areas has worked well within the framework of the existing conformity rule. For all of these reasons, EPA is finalizing the proposed § 93.117 without further changes.

XII. $PM_{2.5}$ Hot-Spot Analyses

In the November 2003 proposal, EPA presented two options concerning hot-spot analyses in $PM_{2.5}$ nonattainment and maintenance areas. One proposed option was to not require hot-spot analyses for FHWA and FTA projects in $PM_{2.5}$ nonattainment and maintenance areas. The other proposed option was to require hot-spot analyses for such projects at certain types of locations if the SIP for the area identified any such locations. Under the second option hot-spot analyses would not be required for any projects before a SIP was submitted and then only if the $PM_{2.5}$ SIP identifies susceptible types of locations.

EPA received substantial comment on this portion of the November 2003 proposal. After considering these comments, EPA, in consultation with DOT, has decided to request further public comment on these and additional options for $PM_{2.5}$ hot-spot requirements. Therefore, EPA is not taking final action on this issue at this time. EPA will be publishing a supplemental notice of proposed rulemaking (SNPRM) on hot-spots in the near future. In that notice, EPA will be soliciting comment on additional options for addressing hot-spot analysis requirements in $PM_{2.5}$ nonattainment and maintenance areas.

EPA will address all comments received on $PM_{2.5}$ hot-spot analysis requirements both in response to the November 2003 proposal as well as the future SNPRM on hot-spots in a final rulemaking after the close of the comment period for the SNPRM. EPA intends to complete its rulemaking on $PM_{2.5}$ hot-spot requirements before $PM_{2.5}$ nonattainment designations become effective.

XIII. PM_{10} Hot-Spot Analyses

EPA also proposed several options for amending PM_{10} hot-spot requirements in its November 2003 proposal. These options included maintaining the current conformity rule's hot-spot analysis requirements. A second option was to limit the analyses to certain circumstances. For example, only requiring analyses if the SIP has identified motor vehicle emissions as a localized problem. Under this scenario PM_{10} hot-spot analyses would not be required if the SIP determined that motor vehicle emissions do not cause localized problems. A third option was to limit PM_{10} hot-spot analyses to certain types of project locations. EPA also proposed an option to eliminate all PM_{10} hot-spot analysis requirements from the conformity rule.

Similar to Section XII. on $PM_{2.5}$ hot-spot requirements, EPA has decided to delay making a final decision on changes to the existing PM_{10} hot-spot analysis requirements, since EPA received substantial comment on the proposed options. In light of those comments and due to the close relationship between PM_{10} and $PM_{2.5}$ hot-spot requirements, EPA and DOT have decided to propose additional options for PM_{10} hot-spot analyses in a future SNPRM for hot-spots. In that notice, we will solicit comment on additional options for addressing hot-spot analysis requirements in PM_{10} nonattainment and maintenance areas.

EPA will address all comments received on PM_{10} hot-spot analysis requirements both in response to the November 2003 proposal and the future SNPRM in a final rulemaking after the close of the comment period for the SNPRM. EPA intends to complete rulemaking on PM_{10} hot-spot requirements before $PM_{2.5}$ nonattainment designations become effective. EPA notes, however, that the existing conformity rule's PM_{10} hot-spot requirements continue to remain in effect at this time. Until a final action is taken, PM_{10} nonattainment and maintenance areas will continue to meet the PM_{10} hot-spot requirements of §§ 93.116 and 93.123 of the current conformity rule.

XIV. Federal Projects

A. Description of Final Rule

Today's final rule is consistent with the June 30, 2003, proposal and the most recent EPA and DOT guidance implementing the March 2, 1999 court decision. The final rule modifies § 93.102(c) of the conformity rule so that no new federal approvals or funding commitments for non-exempt projects can occur during a transportation conformity lapse. A conformity lapse generally occurs if transportation plan and TIP conformity determinations are not made within specified time frames. During a conformity lapse no new conformity determinations for plans, TIPs, and FHWA or FTA non-exempt projects may be made. Under the new § 93.102(c) provision, non-exempt transportation project phases can be implemented during a lapse if they have received all required FHWA or FTA approvals or funding commitments and have met associated conformity requirements before the lapse. However, no new federal approvals or funding commitments for subsequent or new project phases can be made during the lapse.

EPA is making one minor revision to § 93.102(c) in today's rulemaking that was not included in the June 30, 2003 proposal. Specifically, we are clarifying that § 93.102(c) requirements do not have to be satisfied at the time of project approval for TCMs that are specifically included in an applicable SIP (provided that all other relevant transportation planning and conformity requirements are met). During the development of this final rule, EPA realized that the conformity rule § 93.114(b), as amended on November 15, 1995 (60 FR 57179), provided this exception for TCM project approvals during a conformity lapse. Therefore, EPA is including this exception in § 93.102(c) of today's action. EPA does not believe a reproposal is necessary to finalize this minor change to § 93.102(c) as this revision will not change the requirements for federal funding and approval of projects and project phases as determined by the court and simply clarifies the relationship between existing § 93.114(b) requirements and today's § 93.102(c) revision. Areas should refer to the November 1995 rulemaking for more information on § 93.114(b) requirements.

As proposed, today's final rule also moves previous § 93.102(c)(2) requirements relating to approved projects to § 93.104(d) to limit redundancy and improve organization of the conformity rule. The conformity rule continues to require a new conformity determination when a significant change in a project's design concept and scope has occurred, a supplemental environmental document for air quality purposes is initiated, or three years have elapsed since the most recent major step to advance a project has occurred. A major step is defined in today's conformity rule as ''* * * NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and construction (including Federal approval of plans, specifications and estimates)'' (40 CFR 93.104(d)).

See EPA's conformity website listed in Section I.B.2. to download an electronic copy of the June 30, 2003 proposal to this final rule and the latest EPA and DOT guidance implementing the court decision.

B. Rationale and Response to Comments

EPA is revising the conformity rule in a manner consistent with the Clean Air Act, as interpreted by the court decision. Previously, section 93.102(c)(1) of the 1997 conformity rule

(62 FR 43780) allowed a highway or transit project to receive additional federal approvals and funding commitments during a lapse if the project came from a previously conforming plan and TIP, a conformity determination for the project had been made, and the NEPA process was completed before the lapse. In its decision, the court held that § 93.102(c)(1) of the 1997 rule violated the Clean Air Act since it allowed such transportation projects (*i.e.*, ''grandfathered'' projects) to receive further federal approvals or funding commitments during a lapse. As a result, the final rule allows projects and project phases to advance during a conformity lapse only if approvals or funding commitments for these projects and project phases were granted prior to the lapse.

Most commenters supported EPA's proposal for advancing project phases during a conformity lapse and believed that DOT and EPA's interpretation of the court decision was appropriate. Two commenters also agreed that EPA's June 30, 2003 proposal is a better interpretation of the court decision than a previous interpretation reflected in a FHWA/FTA guidance document issued on June 18, 1999. The June 1999 guidance has since been revised and superceded by the January 2, 2002 FHWA/FTA guidance. Under the FHWA/FTA January 2002 guidance document and today's final rule, any project phase (*e.g.*, right-of-way (ROW) acquisition, final design or construction) that is authorized before a conformity lapse can be implemented during the lapse. However, no further approvals or funding commitments for subsequent project phases can occur during the lapse. See Section II. for further information regarding these guidance documents.

EPA believes this change is appropriate because the court did not explicitly rule on the issue of how previously authorized project phases are affected during a lapse. Therefore, the court decision has led EPA and DOT to conclude that a project phase that previously receives all federal approvals and funding commitments can be implemented during a conformity lapse. EPA and DOT believe suspending such authorized commitments during a conformity lapse is not required by the Clean Air Act.

Although most commenters understood that EPA's proposed rule revision is constrained by the court decision, a few commenters still expressed a preference for the previous rule's grandfathering provision. Specifically, one commenter stated that without the grandfathering provision, conformity lapses will lead to costly delays in infrastructure development and will waste valuable planning resources. Another commenter stated that the conformity process should be a forward-looking process and that once a project is included in a conforming plan and TIP, that project should be permanently ''grandfathered'' until built, changed substantially or removed from the plan/TIP, as having previously satisfied all of its requirements under the Clean Air Act. Another commenter urged EPA to change the conformity rule so that projects can go forward during a conformity lapse once the environmental requirements pertaining to air quality in the NEPA process have been satisfied. This commenter questioned why project approvals and funding commitments that are unrelated to air quality (*e.g.*, ROW acquisition) should be impacted by the conformity rule.

As stated above, the court ruled that the previous rule's grandfathering provision did not meet Clean Air Act requirements since it allowed project approvals and funding commitments to be granted during a conformity lapse (*i.e.*, when the transportation plan and TIP do not conform). Thus, this rule change is mandated by the court decision, as noted by most commenters. This decision has resulted in a process for advancing projects that is more protective of air quality than the previous rule's grandfathering provision. Although some project phases, such as ROW acquisitions, will not affect regional motor vehicle emissions by themselves, such phases are significant steps towards the eventual construction and operation of a transportation project. EPA believes that if unauthorized project phases are allowed to proceed during a lapse, federal approval and funding may be expended on projects that do not conform to the SIP's air quality goals.

Also, EPA believes it is important to understand the practical impact and scope of eliminating the previous rule's grandfathering provision in most areas. This final rule will affect only those areas that are unable to meet a conformity deadline, and as a result, enter into a conformity lapse. This rule does not affect federal funding and approval of projects in areas that have a conforming plan and TIP in place and are meeting the conformity rule's requirements.

XV. Using Motor Vehicle Emissions Budgets From Submitted SIPs for Transportation Conformity Determinations

A. EPA's Role in the Adequacy Process

1. General Description of Final Rule

Today's final rule continues to allow certain SIP budgets to be used for conformity before a SIP is approved. However, this final rule modifies several provisions under §§ 93.109 and 93.118 of the conformity regulation to specify that EPA must affirmatively find submitted budgets adequate before they can be used in a conformity determination. The final rule also establishes the process by which EPA will review and make adequacy findings for submitted SIPs, as described in the June 30, 2003 proposal.

Specifically, the final rule eliminates those provisions in §§ 93.109 and 93.118(e) that required areas to use budgets from submitted SIPs 45 days after submission unless EPA had found them inadequate. Instead, today's rule stipulates that before a budget from a SIP submission can be used in conformity, EPA must find it adequate using the criteria in § 93.118(e)(4). Under this final rule, a budget cannot be used until the effective date of the **Federal Register** notice that announces that EPA has found the budget adequate, which would be 15 days from the date of notice publication (unless the adequacy finding is included in EPA's final approval notice for the SIP; *see* Section XV.C.1 below for more information).

This final rule also incorporates language from the November 5, 2003 conformity proposal (68 FR 62690). EPA's November 2003 proposal was consistent with the June 30, 2003 proposal that addressed the March 1999 court decision. However, the November 2003 proposal further clarified when the budget test would be required when EPA publishes a final approval or direct final approval of a SIP and budgets in the **Federal Register**. For more information on when approved budgets can be used in conformity determinations, see Section XV.C. of this final rule.

Today's final rule addresses only the procedures for making adequacy findings for submitted SIPs in accordance with the court decision. The final rule does not change the criteria listed in § 93.118(e)(4) of the rule for determining the adequacy of submitted SIPs, as the court did not address this provision in its decision. The final rule is consistent with the June 30, 2003 proposed rule and the adequacy

procedures already in place as a result of EPA's May 14, 1999 guidance issued to implement the court decision. Therefore, existing adequacy procedures will generally remain the same as they have been since the 1999 guidance was issued. EPA notes, however, that the June 30, 2003 proposal and today's final rule include more detailed information on the implementation of the adequacy process and expand upon EPA's May 1999 guidance. See Section II. of this notice for more background information on EPA's guidance document.

2. Rationale and Response to Comments

In its ruling, the court remanded § 93.118(e)(1) of the conformity rule to EPA for further rulemaking. This section of the conformity rule had allowed budgets to be used in conformity determinations 45 days after SIP submission even if EPA had not found them adequate. However, the court ruled that a submitted budget could only be used for conformity purposes if EPA had first found it adequate.

Specifically, the court stated that ''where EPA fails to determine the adequacy of budgets in a SIP revision within 45 days of submission, * * * there is no reason to believe that transportation plans and programs conforming to the submitted budgets ''will not—(i) cause or contribute to any new violation of any standard in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard * * *'' 42 U.S.C. § 7506(c)(1)(B).'' 167 F.3d, at 650. The court remanded § 93.118(e)(1) to EPA so that it could be harmonized with these Clean Air Act requirements. EPA believes this final rule achieves the court's directive.

Most commenters favored using submitted SIPs and budgets that have been found adequate before SIP approval in conformity determinations. Most commenters also supported EPA's proposal to incorporate the existing adequacy process into the conformity rule in accordance with the court decision. EPA received similar statements of support for our proposed adequacy process from one commenter that submitted comments on the November 5, 2003 proposal. Some commenters believed that the existing adequacy process provides certainty to the conformity process and ensures that submitted budgets are consistent with Clean Air Act requirements before they are used in conformity determinations. Additional comments on specific aspects of the adequacy process and EPA's responses to those comments can be found in Sections XV.B. through XV.F. below.

B. General Description of the Adequacy Process

1. Description of Final Rule

The final rule adds a new provision, § 93.118(f), to the conformity rule that provides the basic framework of the adequacy process. The new § 93.118(f) generally reflects EPA's existing adequacy process as proposed in the June 30, 2003 rulemaking and described in EPA's 1999 adequacy guidance. The adequacy process consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding, including response to submitted comments. These three steps are described below. Section XV.B. of today's preamble specifically addresses the adequacy procedures listed in § 93.118(f)(1) that will be used for submitted SIPs in most cases. Section XV.C. covers alternative procedures listed in § 93.118(f)(2) for determining the adequacy of submitted SIPs through the SIP approval process.

EPA will review the adequacy of submitted SIP budgets in cases where a budget can be used for conformity prior to approval. Adequacy reviews would be completed for the following cases:

- SIPs that are considered ''initial SIP submissions'' (generally the first SIP submission to meet a given Clean Air Act requirement). A discussion of ''initial SIP submissions'' can be found in the preamble of the proposed rule entitled, ''Transportation Conformity Rule Amendments: Minor Revision of 18-month Requirement for Initial SIP Submissions and Addition of Grace Period for Newly Designated Nonattainment Areas'' (August 6, 2002, 66 FR 50956–50957);
- Revisions to previously submitted but not approved SIPs; and
- Revisions to certain approved SIPs, as described further in Section XV.D.1. of today's action.

For more information on the SIP submissions that EPA will review for adequacy, see the June 30, 2003 conformity proposal (68 FR 38982–38984).

Notification of SIP submissions: After a state officially submits a control strategy SIP or maintenance plan to EPA, we will notify the public by posting a notice on EPA's adequacy Web site and will attempt to do so within 10 days of submission. EPA's adequacy Web site is the central national location for adequacy information. Currently, the Web site is found at *http://www.epa.gov/otaq/traq/traqconf/adequacy.htm*. We will consider a SIP submission to be formally submitted on the date that the EPA regional office receives the official SIP. In addition, EPA will directly notify identified interested members of the public. If a member of the public would like to be notified when we receive a SIP submission for a particular state or area, he or she should contact in advance the EPA regional employee listed on the Web site for that state. EPA's Web site provides EPA regional contact information so that interested parties can arrange or discuss notification processes. For example, EPA could use postcards, letters, emails or phone calls to notify requesters, as agreed on by the interested party and EPA.

Public comment: A 30-day public comment period will be provided at a minimum in either of the following cases:

- If the state has made the entire SIP submission electronically available to the public via a Web site, electronic bulletin board, etc., the 30-day comment period will start immediately upon the posting of the SIP notice on the EPA adequacy website. EPA will include a link to the state website in its public notification.
- If the SIP is not available via the Internet or is only available in part, if someone requests a paper copy of the entire SIP and EPA receives the request within the first 15 days after the SIP is posted, the 30-day public comment period will start on the date that EPA mails the requested copy of the SIP. However, if no one has requested a copy of the SIP from EPA within 15 days after the date of EPA posting notification, EPA will consider the 30-day comment period to have started immediately upon EPA's adequacy Web site posting.

Our Web site will state when the public comment period begins and ends, and to whom to send comments. The adequacy Web site will also include information on how to obtain a copy of a SIP submission under adequacy review. EPA will not make SIP submissions electronically available on our adequacy Web site. If someone requests a copy of the SIP, the Web site will be updated to reflect any extension of the public comment period.

EPA's adequacy finding: After a thorough review of all public comments received and evaluation of whether the adequacy criteria have been met, the appropriate EPA regional office will make a finding that the submitted SIP is either adequate or inadequate and send a letter indicating EPA's finding, including response to comments, to the state or local air agency and other relevant agencies such as the MPO and state transportation agency. The EPA

regional office will also mail or email a copy of the letter and response to comments to others who request it, as previously arranged.

The EPA regional office will also subsequently announce the adequacy finding in the **Federal Register**. If EPA finds a budget adequate, it can be used for conformity determinations on the effective date as stated in the **Federal Register** notice, which will be 15 days after the notice is published. EPA will post EPA's adequacy letter, our response to any comments, and the **Federal Register** notice on the EPA adequacy Web site.

Alternatively, in cases where EPA is conducting an adequacy review and moving quickly to rulemaking on a SIP, EPA may use the proposed or final rulemaking notice for a control strategy SIP or maintenance plan to announce our adequacy finding, instead of first sending a separate letter to the relevant agencies and following it with a **Federal Register** notice. In these cases, EPA would post our finding on the adequacy Web site, along with the relevant proposed or final rulemaking notice for the SIP that would include any response to comments.

Adequate budgets must be used in all future conformity determinations for an area after the effective date of EPA's adequacy finding pursuant to § 93.109 of today's final rule (or upon EPA's promulgation of a SIP approval as described in Section XV.C.I below); inadequate budgets cannot be used for conformity.

EPA notes that two minor changes to the proposed regulatory text have been incorporated in this final rule regarding the procedures for EPA's adequacy process in § 93.118(f)(1). First, EPA is clarifying in § 93.118(f)(1)(iii) that EPA's response to comments received on the adequacy of a submitted SIP budget must be sent to the state along with EPA's letter that includes its finding. In the June 30, 2003 proposal EPA stated that we will send our letter and response to comments to individuals who request a copy of these documents, but we did not specifically indicate that we would send a copy of the response to comments to the state. As a matter of practice, EPA does not issue adequacy findings through a formal letter to the state without including our responses to comments. Therefore, this minor clarification to the final rule language simply reflects how the adequacy process is currently being implemented.

Second, EPA is also clarifying in § 93.118(f)(1)(iii) that we will only review and consider any comments submitted through the state SIP process that are relevant to our adequacy finding. In § 93.118(f)(2)(iii) of the June 30, 2003 proposal EPA stated that we would respond to any comments submitted through the state process in the docket of our rulemaking to approve or disapprove a SIP (if adequacy is conducted through the SIP approval process). However, this language should be interpreted in context to refer only to comments relating to adequacy. If interpreted to apply to all comments on a submitted SIP, the language is not consistent with EPA's interpretation of existing requirements in §§ 93.118(e)(5) [14] or EPA's current process for adequacy findings of submitted SIPs and budgets that only require consideration of public comments addressing adequacy that were submitted through the state process. EPA and the states have separate established processes for taking action on a SIP and responding to all comments, including comments that relate to other aspects of a submitted SIP, that are received through those individual processes.

EPA believes that a reproposal is not necessary to make these two minor corrections in today's final rule. These minor revisions are consistent with EPA's original intentions and current practice of making adequacy findings.

Finally, EPA intends to review the adequacy of a newly submitted budget through the process described above within 90 days of EPA's receipt of a full SIP submission in most cases. However, adequacy reviews could take longer particularly when EPA receives significant public comments. EPA will work with state and local agencies when adequacy findings can be expedited to meet conformity deadlines.

2. Rationale and Response to Comments

EPA received a number of comments pertaining to different aspects of the proposed adequacy process. In particular, several commenters raised concerns about the length of time EPA has allocated to conduct adequacy reviews, indicating that 90 days is too long before submitted SIPs can become available for conformity purposes. Two commenters specifically urged EPA to commit sufficient staff and resources to ensure that adequacy determinations are timely. Some commenters suggested ideas for shortening the 90-day process by, for example, eliminating the 30-day public comment period and relying solely on the state's public involvement process for SIP development, or conducting adequacy reviews through parallel processing for all SIP submissions. Another commenter suggested eliminating the 15-day effective date for adequacy findings, since the adequacy process can be used to correct mistakes and later find budgets inadequate, if appropriate. In contrast, however, one commenter asked that the effective date be extended, as the current 15-day period does not allow sufficient time to prepare a petition for review and motion for stay in situations where a member of the public might disagree with EPA's finding. Other commenters suggested that parallel processing through the SIP approval process be used in all adequacy reviews to enable submitted SIPs to become available sooner in the conformity process.

Two commenters that submitted comments on the November 5, 2003 proposal requested that EPA commit to making adequacy findings during an explicit time period (*e.g.*, 90 days) to ensure that conformity deadlines are met and to provide more predictability to the conformity process.

After full consideration of all these comments, EPA believes that the current 90-day time frame for conducting adequacy reviews is appropriate and does not need to be modified. EPA believes that providing a 30-day public comment period that is focused entirely on the adequacy of a submitted SIP and that is separate from the state's public process is necessary to make an informed decision on the appropriateness of using a submitted SIP in the conformity process. In addition, we believe that the 15-day effective date is appropriate and should not be shortened or extended. We recognize that the public should be given some time to challenge EPA's finding before it becomes effective in cases where an individual disagrees with EPA's conclusion. We believe this time period before an adequacy finding becomes effective is necessary to ensure a fair and equitable process. However, EPA also understands the needs of conformity implementers to receive new air quality information for incorporation into the transportation planning and conformity processes in a timely manner. Therefore, EPA believes the existing adequacy process that provides a 15-day effective date best achieves these dual goals.

EPA also wants to assure implementers that we are committed to conducting adequacy reviews, especially when such reviews are closely aligned with an upcoming conformity deadline, in an efficient and timely manner. However, as discussed in the June 30, 2003 proposal, some adequacy reviews that are complicated and draw a great deal of public interest

[14] August 15, 1997 final rule; 62 FR 43782.

can take longer than 90 days. EPA is willing to conduct the adequacy review of any SIP submission through parallel processing to expedite our review and finding, if requested to do so by the state. Areas should use the interagency consultation process to consult on the development of SIPs and budgets and to determine whether parallel processing would expedite EPA's adequacy review so that conformity deadlines can be met in a timely manner.

Two commenters disagreed with EPA's existing process for determining the adequacy of submitted SIPs, and instead believed that adequacy findings should be conducted through full notice and comment rulemaking. One of these commenters argued that, in difficult cases, the public needs to have the procedural protections required by Administrative Procedures Act (APA) rulemaking when EPA determines the adequacy of a submitted SIP for conformity purposes. The commenter also argued that under the existing adequacy process, EPA fails to include a statement of basis and purpose in a proposed action that would inform the public prior to submitting comments of the action that the Agency intends to take and the reasons supporting that action, as required by the APA. The commenter cites a pleading filed in a challenge to an adequacy finding that states that under the current adequacy process the public is given no advanced notice of whether EPA considers the SIP and budgets adequate, and if so, what criteria have been applied and what facts have been considered by EPA in its decision.[15]

In response, EPA has always held that adequacy findings do not need to be made through APA notice and comment rulemaking. EPA does not believe these actions involve rulemaking, but rather they are conducted through informal adjudications. In the preamble to the 1997 conformity rule (62 FR 43783) EPA stated, ''it is appropriate not to provide notice and comment for adequacy determinations for submitted SIPs, since these determinations are only administrative reviews and not substantive rules.'' Adequacy reviews are carried out on an informal, case-by-case basis and apply existing criteria in the conformity rule (40 CFR 93.118(e)(4)) that were previously subjected to notice and comment rulemaking.[16] Further, case law establishes that agencies have discretion to decide whether to conduct such actions through rulemaking or adjudication.[17] Since the March 1999 court decision did not address this aspect of the adequacy process, EPA is not reopening this legal conclusion as stated in the 1997 conformity rule in today's action.

However, EPA believes that providing some opportunity for public involvement even in these adjudications adds value to our adequacy review. We believe public comment can assist us in making more informed decisions regarding submitted budgets and their ability to ensure that new transportation activities will not cause or contribute to new violations, worsen existing violations, or delay timely attainment of the air quality standards. As a result, the existing adequacy process that is included in today's final rule provides a minimum 30-day public comment period for each SIP that we review for adequacy. This adequacy public comment period, along with the state's public process during SIP development, allows EPA to make an informed decision through adjudication on whether a submitted SIP meets the adequacy criteria established under § 93.118(e)(4) of the conformity rule.

C. Adequacy Reviews Through the SIP Process

1. Description of Final Rule

EPA is finalizing procedures for conducting adequacy reviews and making adequacy findings through the SIP approval process in § 93.118(f)(2). EPA may use the SIP approval process to conduct our adequacy review when we are moving quickly to approve a SIP soon after it has been submitted. These rule revisions are consistent with the June 30, 2003 conformity proposal and EPA's May 1999 guidance that implements the court's decision. EPA is also clarifying in § 93.109 when the budget test must be satisfied as required by § 93.118 if EPA finds SIP budgets adequate, and also if EPA approves SIPs and budgets through final and direct final rulemakings. This clarification to § 93.109 is consistent with EPA's November 5, 2003 proposal.

When EPA reviews the adequacy of a SIP submission simultaneously with EPA's approval of the SIP, the adequacy process will be substantially the same as that which we have outlined in Section XV.B.1. of this final rule as follows:

Notification of SIP submission: In these cases, EPA will use a notice of proposed rulemaking to notify the public that EPA will be reviewing the SIP submission for adequacy. For example, we will notify the public of our adequacy review through the proposal notice when we are proposing to approve a SIP through parallel processing. In addition, when we make an adequacy finding for a SIP through direct final rulemaking, EPA will publish a proposed approval and a direct final approval in the **Federal Register** on the same day. In both the proposed and direct final rulemakings, EPA would announce the start of its adequacy review.

Public comment: The publication of EPA's proposed approval notice (and direct final approval, when applicable) for a SIP submission will start a public comment period of at least 30 days. EPA will post the relevant proposed and direct final rulemakings on our Web site to notify the public when the comment period for adequacy, as well as for other aspects of the SIP, begins and ends. EPA will also include on the adequacy website information on how to obtain a copy of the SIP submission that EPA has proposed to approve and find adequate.

EPA's adequacy finding: When we announce our adequacy review in a proposal notice only, we will subsequently issue our finding through either a letter to the state or through our final action on the SIP in the **Federal Register**. In the case where we issue our finding prior to a final action on the SIP, EPA will update the adequacy website to include the letter to the state that indicates our finding, responses to any comments received during the public comment period that are relevant to the adequacy of the SIP, and our separate adequacy notice that is published in the **Federal Register** in accordance with § 93.118(f)(1)(iii)–(v). Such findings will become effective 15 days after our published adequacy notice.

In the case where we make our adequacy finding and address response to comments in a subsequent final rule that approves or disapproves the SIP, EPA will update the adequacy website with our finding as published in the final **Federal Register** approval or disapproval notice. In cases where EPA finds the budgets adequate when we approve a SIP, the budgets could be used for conformity purposes upon the publication date of the final approval action in the **Federal Register**. EPA is finalizing this clarification to § 93.109 for each criteria pollutant covered by the current conformity rule, consistent with the November 5, 2003 proposal. As stated in the November 2003 proposal, Clean Air Act section 176(c) requires that transportation activities conform to the motor vehicle emissions level established in the approved SIP.

[15] *TRANSDEF* v. *EPA*, 9th Circuit Court of Appeals, No. 02–70443, Petitioners Motion for Stay, June 2002 at xxiii–xxiv.

[16] July 9, 1996 proposed rule (61 FR 36112) and August 15, 1997 final rule (62 FR 43780).

[17] See, *NCRB* v. *Bell Aerospace Co.*, 416 U.S. 267,294 (1974).

Therefore, EPA believes that once a SIP is approved, its budgets must be used in future conformity determinations under the statute.

When EPA conducts adequacy through direct final rulemaking, EPA's approval and adequacy finding generally become effective 60 days after publication according to the date indicated in the direct final **Federal Register** notice, provided that we receive no adverse comments and no other information or analysis changes EPA's position in that time period. However, if we receive adverse comments or our position changes as a result of further information or analysis, we will publish a notice in the **Federal Register** withdrawing our direct final action and adequacy finding prior to its effective date in most cases. In the case where EPA receives adverse comments that do not affect our adequacy finding, we could publish a notice that withdraws only our direct final approval of the SIP but retains our adequacy finding in the **Federal Register** prior to the effective date of the direct final rule. In any case, EPA will use its Web site to inform the public when the adequacy finding included in a direct final rule takes effect, or that we received comments that resulted in a withdrawal of all or part of our direct final approval action.

Given the nature of the public comment process and effective date associated with direct final rulemaking, an adequacy finding cannot become effective until the effective date of the direct final rule. EPA is including this clarification in § 93.109 of today's rule. This rule revision is consistent with the November 2003 proposal.

Finally, consistent with language in § 93.118(f)(1)(iii), EPA is clarifying in § 93.118(f)(2)(iii) that when we conduct adequacy reviews through the SIP approval process, we will review and consider only those comments submitted through the state SIP process that are relevant to our adequacy finding (in addition to comments that are submitted through EPA's SIP approval process). In § 93.118(f)(2)(iii) of the June 30, 2003 proposal we stated that we would respond to any comments submitted through the state process in the docket of our rulemaking to approve or disapprove a SIP (if adequacy is conducted through the SIP approval process). However, as stated in Section XV.B.1. of today's action, one interpretation of this broad language could have implied that EPA would consider comments submitted through the state process beyond those comments relating to adequacy, which is not consistent with existing requirements or EPA's current adequacy process. Therefore, EPA believes that our final action clarifying this issue is a logical outgrowth of the proposal and that a reproposal is not necessary to make this minor correction limiting our consideration of comments submitted to the state to those comments relevant to the adequacy process in today's final rule.

2. Rationale and Response to Comments

One commenter did not agree with the 60-day effective date of budgets that are found adequate and approved through direct final rulemaking. This commenter argued that the 60-day effective date for direct final rulemaking unnecessarily burdens conformity implementers with additional time requirements, as these budgets would have already undergone public comment through the state's approval process.

EPA disagrees with this comment. When a SIP is found adequate and approved through direct final rulemaking (provided EPA receives no adverse comments), the 60-day effective date provides a 30-day public comment period and a 30-day time period for EPA to review any comments received and issue a withdrawal notice, if necessary. APA rulemaking procedures require EPA to provide a minimum 30-day public comment period when we approve a SIP through direct final rulemaking. In addition, EPA believes that providing a public comment period on our adequacy finding and SIP approval separate from the state's public process is necessary for EPA to make an informed decision on the appropriateness of using a submitted SIP in the conformity process. We also believe that the subsequent 30 days after the close of the 30-day public comment period is critical to review any comments we receive and decide whether any would change our approval of the SIP. If we receive comments that cause us to withdraw our direct final approval of the SIP, the subsequent 30 days is also necessary to perform the administrative tasks to ensure that the approval is withdrawn before it becomes effective. Areas should use the interagency consultation process to coordinate the introduction of new SIPs and budgets so that adequacy reviews can be completed and new budgets are available in time to meet any upcoming conformity deadlines.

Another commenter suggested that adequacy reviews of all submitted SIPs could be accomplished through parallel processing procedures and direct final rulemaking to meet EPA's objective of incorporating submitted SIPs into the conformity process in a timely manner. This commenter was generally opposed to EPA's existing adequacy process and believed that EPA should use notice and comment rulemaking for all adequacy findings.

EPA agrees with the comment that adequacy findings can be expedited through parallel processing procedures. Several states have requested such procedures to expedite EPA's adequacy findings since the 1999 court decision. As stated in the June 2003 proposal, EPA will parallel process a SIP if requested to do so by the state. However, we should note that parallel processing can expedite the adequacy review of a submitted SIP only if no changes to that SIP and its budgets are made before the state officially submits the SIP to EPA for approval. In the event that the SIP significantly changes between the time EPA begins its initial adequacy review and the state's formal submission of the SIP, EPA would have to re-start the adequacy process once the new SIP is formally submitted.

EPA does not believe, however, that direct final rulemaking would expedite the adequacy process for submitted SIPs in most cases. Under the situation the commenter has suggested, we would conduct our adequacy review and develop a proposed and direct final approval of our adequacy finding either at the same time that the state holds its public comment period (*i.e.*, parallel processing) or after the SIP has been formally submitted to EPA. Once EPA completes its review and publishes the proposed and direct final rulemakings in the **Federal Register**, the budgets could not be used until 60 days after publication even if no adverse comments were received on EPA's direct final approval. If we received any relevant adverse comments, we would have to withdraw our direct final rule and publish a subsequent approval notice with response to comments.

The purpose of the current adequacy process is to introduce new adequate submitted SIPs and budgets into the conformity process in a timely manner. EPA believes conducting all adequacy reviews through direct final rulemaking would defeat this purpose in many cases. EPA believes that conducting an adequacy review, preparing proposed and direct final rulemakings and providing a 60-day effective date (that includes a 30-day comment period), would require a time period much greater than the 90 days that EPA currently contemplates for the process. This required time period would significantly delay the use of adequate submitted budgets in conformity, especially in cases where EPA cannot

begin its adequacy review of a SIP until the state formally submits it to EPA for approval. Under the current adequacy process, EPA is able to complete its initial adequacy review concurrently with the adequacy public comment period, and thus, reduce the amount of time necessary to make an adequacy finding. Under direct final rulemaking, however, EPA would need to complete its adequacy review of submitted budgets before it could prepare and publish both a proposed approval and direct final approval of the budget's adequacy.

In addition, direct final rulemaking is typically used only when an approval is straight-forward and no adverse comments are expected. In cases where SIPs are more controversial and adverse comments are received, the use of direct final rulemaking could delay the use of adequate budgets in the conformity process if EPA is required to spend time withdrawing its direct final approval and publish a subsequent final approval notice in the **Federal Register** with response to comments some time significantly later.

For information on EPA's position regarding the general need to find submitted SIPs adequate through notice and comment rulemaking, *see* Section XV.B.2. above.

D. Use of Submitted Revisions to Approved SIPs

1. Description of Final Rule

EPA is also finalizing a minor clarification to a sentence in § 93.118(e)(1), consistent with the June 30, 2003 conformity proposal. Paragraph § 93.118(e)(1) of today's rule clarifies that a budget from a submitted SIP cannot be used for conformity if an area already has an approved SIP that addresses the same pollutant and Clean Air Act requirement (*e.g.*, rate-of-progress or attainment for a given air quality standard), and that approved SIP has budgets established for the same year as the submitted SIP.

2. Rationale and Response to Comments

EPA received a number of comments on the issue of using submitted SIPs in conformity once an approved SIP has already been established. Several commenters encouraged EPA to amend the conformity rule to allow adequate budgets to supercede approved budgets in all cases or when EPA believes it to be justified. One commenter that submitted comments on the November 5, 2003 proposal requested further clarification on when adequate budgets replace existing approved budgets. This commenter indicated that there has been confusion over this aspect of the rule and believed that requiring adequate budgets to be fully approved before they can replace existing approved budgets would be burdensome and would defeat the purpose of the adequacy process. In contrast, another commenter expressed concern over the use of submitted SIPs in conformity determinations when an approved SIP for the same year and Clean Air Act requirement already exists.

EPA believes that Clean Air Act section 176(c) clearly requires transportation plans, TIPs and projects to conform to a nonattainment or maintenance area's approved SIP before such activities can be funded or approved. Therefore, EPA believes it has no statutory authority to allow submitted budgets that are established for the same year and Clean Air Act requirement to supercede budgets that have already been approved into the SIP. In general, a submitted budget replaces a previously approved budget established for the same year and Clean Air Act requirement only after EPA has approved the submitted budget. EPA notes, however, that submitted budgets that are established for a different year or Clean Air Act requirement than a previously approved budget must be used in conformity upon EPA's adequacy finding, along with all other applicable adequate and approved budgets. Thus, EPA cannot agree with commenters' request to allow submitted SIPs to supercede approved SIPs in all cases.

However, there have been cases where, based on unique circumstances, EPA has agreed to a state's request to limit our approval of a SIP in such a manner that a revision to that SIP could be used upon the effective date of EPA's adequacy finding. Also, EPA has limited its approval of certain serious and severe 1-hour ozone attainment SIPs so that updated adequate SIP budgets based on the MOBILE6 emissions factor model could be used prior to EPA's approval.[18] In these cases, EPA has limited its approval of the original SIP so that the budgets included in that SIP are no longer considered ''approved'' upon the effective date of our subsequent adequacy finding for the revised SIP. EPA concludes that such actions to limit the approval of a SIP are permitted under the Clean Air Act and conformity rule, as both the statute and regulations only require the use of approved SIPs and budgets in the conformity process.

Another commenter objected to the continued use of submitted SIPs in conformity altogether, arguing that such SIPs lacked sufficient authority and validity to provide the basis for a conformity test in the absence of an approved SIP. At a minimum, the commenter suggested that in cases where a submitted SIP is used in conformity, the final rule should require that any transportation project approved on the basis of that submitted SIP should be subject to rescission, until the SIP itself is finally approved. Under circumstances where a SIP is submitted and found adequate, but subsequently found inadequate or disapproved, the commenter believed that this subsequent action on the SIP should reverse the approval of highway capacity increasing projects that received approval or funding after having conformed to budgets that are ultimately found inadequate or disapproved.

EPA disagrees with these comments. When no adequate or approved budgets are available for conformity purposes, the interim emissions tests (*i.e.*, the build/no-build test and/or the baseline emissions tests) in § 93.119 must be met to fulfill the conformity requirements. EPA, along with most stakeholders, prefers the use of submitted adequate SIPs and budgets for conformity rather than the interim emissions tests provided by § 93.119[19] because we believe that submitted SIPs and budgets are a better measure of emissions, consistent with attaining and maintaining a given standard and pollutant. Submitted SIPs and budgets that EPA has found adequate should be based on the most recent data and models available at the time the SIP is developed and should reflect accurate estimates of emissions that are consistent with attaining or maintaining a given pollutant and standard. Therefore, EPA believes that a submitted SIP for an applicable standard that satisfies the adequacy criteria in § 93.118(e)(4) provides a reasonable basis for ensuring that transportation activities do not worsen existing violations, create new violations or delay timely attainment of the relevant air quality standard.

Furthermore, EPA concludes that the use of submitted SIPs is supported by the Clean Air Act. Before a SIP has been submitted and approved by EPA, the Clean Air Act section 176(c)(3) requires

[18] November 8, 1999, Memorandum from Lydia N. Wegman, Director of the Air Quality Standards and Standards Division of EPA's Office of Air Quality Planning and Standards, and Merrylin Zaw-Mon, then-Director of the Fuels and Energy Division of EPA's Office of Mobile Sources, to Air Director, Regions I–VI, ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking.''

[19] August 15, 1997, 62 FR 43781–43783.

that transportation plans and TIPs must be consistent with the most recent estimates of mobile source emissions, provide for the expeditious implementation of TCMs in approved SIPs, and contribute to the attainment of the air quality standards in certain ozone and CO areas. Clean Air Act section 176(c)(1) also requires that transportation activities not worsen violations or delay timely attainment of the air quality standards. Because the adequacy criteria require submitted budgets to be consistent with progress and attainment requirements, we believe that conformity determinations based on submitted budgets that have been reviewed and found adequate by EPA through the adequacy process meet these statutory requirements in cases where an approved budget does not exist for the same year and Clean Air Act requirement. In addition, EPA believes that the use of a submitted adequate budget for a given air quality standard serves the Clean Air Act's goals for that standard better than either of the interim emissions tests. This position regarding the use of submitted SIPs in conformity in the absence of an approved SIP has also been endorsed by a court in *1000 Friends of Maryland* v. *Carol Browner, et al.*, 265 F.3d 216 (4th Cir. 2001).

EPA also notes that in situations where a SIP has not yet been approved, the March 1999 court decision did not find the use of submitted budgets in conformity unlawful. In its decision, the court only ruled against the use of submitted SIPs that EPA had failed to affirmatively find adequate for conformity purposes. In the absence of EPA's adequacy finding, the court believed that there is no assurance that transportation activities would not cause new violations, increase the severity of existing violations or delay the timely attainment of an air quality standard. However, the court did not make a similar finding in the case where EPA has found a budget adequate. As a result of this decision, EPA developed the existing adequacy process to ensure that submitted SIPs and budgets are appropriate for use in the conformity process, while still retaining the flexibility of the 1997 conformity rule that allows submitted SIPs to be used in a timely manner in place of the interim emissions tests.

EPA also disagrees with the commenter's suggestion that transportation project approvals that conform to an adequate budget should be subject to rescissions in the event that the SIP and motor vehicle emissions budgets are later found inadequate or disapproved. We believe that such an approach would cause significant confusion and only serve to severely disrupt the transportation planning and conformity processes. EPA has always regarded conformity as a prospective and iterative process. EPA believes that a conformity determination that meets the Clean Air Act and conformity rule's requirements at the time the determination is made should remain valid, regardless of whether the SIP and budgets on which that determination is based are subsequently found to be inadequate or disapproved. Since 1997, § 93.118(e)(3) and § 93.120(a)(1) of the conformity rule have provided for conformity determinations based on budgets that are subsequently found inadequate or disapproved to remain in effect, and in overturning § 93.118(e)(1) and § 93.120(a)(2) of the rule, the court did not indicate any concern with these other provisions.

In the limited case where a transportation plan and TIP have been found to conform to applicable budgets that are later found inadequate or disapproved, such budgets could no longer be used in future conformity determinations once the disapproval or inadequacy finding becomes effective. In the next conformity determination, emissions projected from the transportation plan and TIP, together with emissions projected from the existing transportation network, would have to meet new and/or existing budgets that have been found adequate or approved, or if no budgets are available, the interim emissions test(s) in § 93.119.[20] As a result, the next conformity determination would ensure that the emissions from all on-road transportation sources would again be consistent with the area's goals for attaining or maintaining the air quality standards. In that determination, projected emissions reflecting projects that were approved based on the previous inadequate or disapproved SIP would have to be taken into account, before the plan and TIP could again conform. EPA believes these existing requirements and the iterative nature of the conformity process will address any of the above concerns.

E. Changing a Previous Finding of Adequacy or Inadequacy

1. Description of Final Rule

As explained in the June 30, 2003 conformity proposal, EPA can change an adequacy finding from adequate to inadequate or from inadequate to adequate for a specific reason such as receiving new information or conducting further review and analyses that affect our previous finding. For example, EPA might change a finding of inadequacy if a state submits additional information that clarifies or supports the adequacy of the submitted SIP and budget. In this case, EPA will treat the additional information as a supplement to the previous SIP submission, and would post a notice on the adequacy Web site and begin a new 30-day public comment period on the entire SIP including this new information. After reviewing any comments, we would make a new finding, as appropriate, in accordance with those procedures in § 93.118(f) of this final rule.

We could change our finding to inadequate in the case where we find the budgets in a submitted SIP adequate but later discover based on additional information or further review that they do not meet the criteria for adequacy. EPA requested comment in the June 30, 2003 proposal on whether the public should be provided an opportunity to comment on any new information before a subsequent finding of inadequacy becomes effective in cases where EPA reconsiders its initial finding of adequacy.

Based on comments received, the final rule does provide for a subsequent public comment period of at least 30 days in cases where EPA believes the public could provide helpful insight and analysis for determining whether an initial finding of adequacy should be changed because of new information. In such cases, EPA would re-post the SIP on the adequacy Web site and start another minimum 30-day public comment period. EPA would also provide an explanation of how the new information has caused us to reconsider our initial adequacy finding. After evaluating any comments received during the public comment period, EPA will determine whether the submitted SIP is inadequate using the adequacy procedures described in either § 93.118(f)(1) or (f)(2) of today's rule. In cases where EPA reverses its previous finding to a finding of inadequacy using procedures in § 93.118(f)(1), such findings would become effective

[20] EPA also notes that upon the effective date of a SIP disapproval without a protective finding, an area would enter into a ''conformity freeze.'' During a conformity freeze, only projects in the first three years of the current conforming plan and TIP can proceed. No plan and TIP conformity determinations can be made until a new control strategy SIP revision fulfilling the same Clean Air Act requirement as that which EPA disapproved is submitted, and EPA finds the motor vehicle emissions budgets in that SIP adequate for conformity purposes or approves the new revision. For more information on conformity freezes and the consequences of a SIP disapproval without a protective finding, see Section XVII. of this final rule.

immediately upon the date of EPA's letter to the state. EPA believes this is necessary to prevent further use of inadequate budgets. Under § 93.118(f)(1), we would also publish a notice of our inadequacy finding in the **Federal Register** and announce our finding on EPA's adequacy Web site.

However, the final rule does not provide for a subsequent comment period under certain circumstances where it is obvious that a budget has become inadequate. For instance, if a state has submitted a new SIP indicating that the prior SIP submission no longer provides for attainment, it would be clear that the prior submission is inadequate. The final rule allows EPA to proceed on a case-by-case basis using the adequacy procedures described in § 93.118(f)(1) to make a finding of inadequacy effective immediately by explaining these facts in a letter to the state. In this case, EPA would also publish a **Federal Register** notice of that finding and post it on the adequacy Web site. EPA believes that in such situations public comment would not be necessary or in the public interest. Rather, it would be more important for EPA to complete the adequacy process quickly and limit further use of such clearly inadequate budgets in the conformity process.

2. Rationale and Response to Comments

EPA received four comments on whether an additional public comment period should be provided before EPA can reverse an initial adequacy finding to a finding of inadequate. Three of these commenters supported a public comment period of at least 30 days in these cases, with two of the commenters specifically stating that the additional time provided by the comment period could facilitate the completion of a conformity determination based on a previously adequate budget prior to the budget being deemed inadequate. One commenter, however, agreed with EPA's position that it is not always in the best interest of public health to delay an inadequacy finding until after a public comment period on new information has concluded.

Based on these comments, EPA is promulgating a final rule that would provide at least a 30-day public comment period in certain cases where new information is subjective and does not provide a clear answer as to whether the submitted SIP is still adequate. In these cases, EPA believes that soliciting public comment is appropriate and could provide helpful insight and analysis on determining the impact of the new information on the adequacy of a submitted SIP. However, under this final rule, EPA would not provide a public comment period in cases where it is obvious that a budget has become inadequate. EPA believes this approach to the final rule would serve to protect the public health while still preserving the role of public involvement in the adequacy process. Under this final rule, EPA will proceed on a case-by-case basis to determine whether new information for a submitted SIP budget warrants an additional public comment period, if such information causes us to reconsider our initial finding of adequacy.

One commenter also suggested that EPA investigate the necessity of even having to make a finding of inadequacy for SIPs that EPA has previously found adequate. The commenter argued that since the court directed EPA to make a formal adequacy finding for a submitted SIP before it can be used in a conformity determination, the SIP approval process could subsequently be used to further review the adequacy of the SIP's budgets. In cases where further review or additional information reveals that an adequacy finding is no longer appropriate, EPA assumes from this comment that a subsequent finding of inadequacy would be issued through a SIP approval or disapproval action.

EPA agrees that in some cases the SIP approval or disapproval process could be used to issue a subsequent finding of inadequacy for a SIP that was previously found adequate. However, in other cases, we believe that issuing a subsequent finding of inadequacy prior to EPA's approval and/or disapproval action for the SIP is necessary to protect public health. In most cases, EPA conducts a lengthy and detailed review of a submitted SIP as part of the SIP approval process. This review involves an evaluation of many aspects of the SIP that are not directly related to the motor vehicle emissions budgets. In situations where new information becomes available that clearly indicates that the budgets in a submitted SIP are inadequate prior to EPA's completed review of the entire SIP, we may determine that it is in the best interest of public health to issue a separate finding of inadequacy before going forward with a SIP approval and/or disapproval action. As a result, this final rule reserves EPA's ability to change a previous finding to a finding of inadequacy as provided by the existing adequacy process with public comment where the Agency deems necessary.

F. Adequacy Provisions Not Affected by This Rulemaking

1. Description of Final Rule

This final rule does not change any of the existing adequacy criteria in the conformity regulation (§ 93.118(e)(4)). Furthermore, the rule continues to provide that reliance on a submitted budget for determining conformity is deemed to be a statement by the MPO and DOT that they are not aware of any information that would indicate that emissions consistent with such a budget would cause or contribute to any new violation, increase the frequency or severity of an existing violation, or delay timely attainment of the relevant standards (§ 93.118(e)(6)). These provisions were not affected by the court decision; therefore, EPA did not address these provisions in this rulemaking.

2. Rationale and Response to Comments

One commenter objected to an alleged presumption inherent in § 93.118(e)(6) of the conformity rule. Prior to EPA's approval of a SIP, § 93.118(e)(6) requires the MPO and DOT's conformity determination to be considered a statement that the MPO and DOT are not aware of any information that would indicate that emissions consistent with a submitted SIP would violate the Clean Air Act's requirements that transportation activities not cause or worsen a violation or delay timely attainment of the air quality standards. The commenter stated, however, that this presumption may not lawfully be substituted for the affirmative determination that an MPO is required to make under Clean Air Act section 176(c)(2)(A) or that DOT is required to make under Clean Air Act section 176(c)(1). The commenter also indicated that the regulatory requirement in § 93.118(e)(6) effectively relieves MPOs and DOT of meeting these statutory requirements before a SIP has been submitted or after a SIP has been approved. In the commenter's opinion, this provision implies that EPA assumes the statutory criteria are satisfied if a budget is from an approved SIP, and therefore, silently waives any requirement that these criteria be addressed in such cases. The commenter also argued that the budget test demonstrated for select analysis years over the time frame of a transportation plan does not fully satisfy the statutory requirement that transportation activities conform to the SIP and not cause or worsen air quality violations in every year consistent with Clean Air Act section 176(c)(1)(A) and (B).

In this rulemaking, EPA did not propose any changes to the rule's existing § 93.118(e)(6) provision. Therefore, EPA cannot address this comment in today's final rule and is not re-opening this aspect of the conformity rule in this action.

Furthermore, EPA does not agree that there is a presumption inherent in § 93.118(e)(6) of the rule, nor do we agree with the commenter's interpretation of § 93.118(e)(6) as it relates to the statutory requirements before a SIP is submitted and after a SIP has been approved. When EPA established the § 93.118(e)(6) requirement in the 1997 conformity rule, we did so as another ''check'' to ensure that submitted SIPs and budgets are appropriate to use in conformity determinations before such SIPs and budgets are approved. EPA's adequacy review is a cursory review of the SIP and motor vehicle emissions budgets to ensure that the minimum adequacy criteria are met before a submitted SIP is used in a conformity determination. Therefore, we included § 93.118(e)(6) in the 1997 final rule to share responsibility with the MPO and DOT for ensuring that the use of submitted budgets would not cause or contribute to any new violation; increase the frequency or severity of any existing violation; or delay timely attainment of the air quality standards. This provision clarifies that, in the absence of an EPA approved SIP, the MPO and DOT may not base conformity determinations on submitted SIPs that they have reason to believe do not satisfy Clean Air Act requirements.

Once EPA has approved a SIP, however, we have always held that conformity to that approved SIP fulfills the Clean Air Act's conformity requirements. Section 176(c)(2)(A) of the Act specifically requires conformity determinations to show that ''emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plan.'' Consistent with the Clean Air Act, section 93.101 of the conformity rule defines an ''applicable implementation plan'' as the portion(s) of a SIP, or most recent revision thereof, that has been approved by EPA. When EPA approves a SIP it is because we have concluded that the SIP and budgets are consistent with the SIP's purpose for attaining or maintaining a given air quality standard. Thus, since EPA promulgated the original conformity rule in 1993 (58 FR 62188), the budget test has been the mechanism that EPA believes is appropriate for meeting the statutory requirements for demonstrating conformity once a SIP becomes available for conformity purposes. Other tests or analyses in addition to the budget test have never been required by the conformity rule once a SIP is approved and EPA has not reopened this issue in this rulemaking.

EPA also disagrees with the commenter's statement that the conformity rule's current budget test and regional emissions analysis year requirements are inconsistent with the Clean Air Act. The Clean Air Act does not address the specific time frame or years in which conformity emissions tests or analyses must be conducted. Since the November 24, 1993 conformity rule (58 FR 62188), EPA has maintained that once a budget becomes available for conformity purposes a demonstration of conformity for specific budget test years as described in § 93.118 is sufficient for meeting the Clean Air Act requirements and ensuring that emissions from transportation activities do not cause violations, worsen existing violations or delay timely attainment of the air quality standards. In addition, EPA has always held that prior to a submitted SIP, the interim emissions tests as required by § 93.119 of the current rule are also appropriate for meeting the statutory requirements (58 FR 62188).

Conducting conformity determinations, including regional emissions analyses to satisfy §§ 93.118 and 93.119 requirements, demands a significant amount of state and local resources. Therefore, EPA believes it would be impractical and overly-burdensome to require MPOs and state transportation agencies to conduct the applicable conformity test and regional emissions analysis for every year of a 20-year transportation plan. Based on EPA's interpretation of the Clean Air Act, we believe that the current rule's conformity test and emissions analysis year requirements are consistent with the statute, reasonable to implement and protective of public health. Again, EPA has not reopened this aspect of the conformity rule in this rulemaking, although we are clarifying § 93.118 as described in Section XXIII. of this final rule.

The same commenter also expressed concern over how EPA has applied the adequacy criteria established in § 93.118(e)(4) of the conformity rule to certain submitted SIPs. Specifically, the commenter objected to adequacy findings for submitted SIPs that, (1) lack a control strategy that identifies all the control measures needed for reasonable further progress, attainment or maintenance, or (2) lack either fully adopted measures that satisfy the requirements of 40 CFR 51.121 or written commitments to adopt specific measures that have been conditionally approved pursuant to Clean Air Act section 110(k)(4). The commenter argues that EPA has failed to adhere to the requirements of the Clean Air Act and conformity rule when we issue adequacy findings for submitted SIPs that rely on enforceable commitments to adopt additional control measures. In cases where additional mobile source controls are needed to satisfy a SIP's enforceable commitments, the commenter believed that the motor vehicle emissions budgets in such SIPs cannot be adequate to provide for attainment, since the budgets do not reflect the emissions reductions from the additional measures. As a result, the commenter requested that EPA clarify that enforceable commitments may not be relied upon to make an adequacy finding for SIPs that fail to contain sufficient, adopted, enforceable control measures to meet the statutory requirements for reasonable further progress, attainment or maintenance. The commenter believed that such a clarification would reaffirm the conformity rule's requirements that only SIPs that contain sufficient control measures to demonstrate attainment can be found adequate.

In this rulemaking, EPA did not propose changes or clarifications to the existing adequacy criteria listed in § 93.118(e)(4). This rulemaking only addresses the process by which EPA finds submitted SIPs adequate for conformity purposes, in accordance with the March 1999 court decision. The existing adequacy criteria were established in the 1997 conformity rule (62 FR 43780) and were not impacted by the court decision. Therefore, EPA is not revising these criteria nor reopening this aspect of the conformity rule in this action.

EPA also disagrees with the commenter's position that SIPs that rely on enforceable commitments fail to meet the adequacy criteria established in § 93.118(e)(4) of the rule. Section 93.118(e)(4) of the conformity rule does not require that all necessary control measures be identified and adopted to find a submitted SIP adequate. The adequacy criteria in the conformity rule only requires a budget to come from a submitted SIP that provides for reasonable further progress, attainment or maintenance of a given standard. The relevant section of the rule, § 93.118(e)(4)(iv), states that a submitted SIP is adequate if: ''The motor vehicle emissions budget(s), when considered together with all other emissions

sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance * * *''. This provision of the rule only requires that the total emissions allowed by the SIP, including the motor vehicle emissions budgets, are consistent with the Clean Air Act's purpose of the SIP (*e.g.*, attainment). This provision of the rule does not require a submitted SIP to include all of the specific control measures necessary to meet its statutory purpose.

Furthermore, EPA disagrees with the commenter that budgets from SIPs that include enforceable commitments cannot be adequate to provide for attainment. Clean Air Act provisions that address control strategy SIPs, such as sections 110(a)(2)(A), 172(c) and 182, require SIPs to contain a control strategy that provides sufficient emission reductions to demonstrate attainment by the statutory deadline. EPA believes that the use of enforceable commitments as a limited part of an overall control strategy for a SIP is reasonable and consistent with these provisions of the Clean Air Act. Therefore, EPA believes that where we approve or find adequate a SIP control strategy that includes an enforceable commitment, EPA's approval or adequacy finding for the motor vehicle emissions budgets in such a SIP would also be appropriate. EPA believes that as long as the budgets, in addition to all other emission sources and controls identified in the SIP (including any enforceable commitments), are consistent with a SIP's purpose of attaining or maintaining a given air quality standard, conformity to such budgets will also be consistent to the SIP's clean air goals.

EPA also believes that SIPs that include enforceable commitments are consistent with both 40 CFR 51.121 relating to SIP control measures and Clean Air Act section 110(k)(4) requirements regarding conditional approvals. 40 CFR 51.281 requires that in cases where a SIP relies on a specific regulation as the basis for emissions reductions, that regulation must be properly adopted and copies of it must be submitted to EPA. This provision, however, does not require SIPs to consist only of rules that have been enacted as regulations and has no bearing on our ability to find a submitted budget adequate for conformity purposes. Clean Air Act section 110(k)(4) gives EPA the authority to conditionally approve a SIP that contains a commitment to adopt ''specific enforceable measures.'' Such a conditional approval automatically converts to a disapproval if the measures are not adopted within one year, and thus the commitment itself is not enforceable. EPA believes, however, that SIPs that include adopted control measures as well as the enforceable commitment to identify and adopt additional measures can be found adequate and fully approved if such commitments meet various criteria and will achieve sufficient emission reductions to meet Clean Air Act deadlines and attain or maintain the air quality standards. In these cases, such commitments may extend beyond one year and are enforceable against the state if the state fails to meet the commitment by the specified time frame. EPA believes that it is appropriate to consider and approve the use of qualified enforceable commitments in cases where a state is not able to identify currently feasible measures to fill a small gap of needed emissions reductions.

EPA's current policy for approving SIPs that are based on enforceable commitments was recently upheld in a decision by the court of appeals, *BCCA Appeal Group, et al.*, v. *U.S. EPA, et al.*, 348 F.3d 93 (5th Cir. 2003). A complete discussion of our position on the use of enforceable commitments can be found in EPA's briefs in *BCCA Appeal Group, et al.*, v. *U.S. EPA, et al.*, 5th Cir. No. 02–60017, September 20, 2002, at 115–146 and *TRANSDEF, et al.*, v. *EPA, et al.*, 9th Cir. No. 02–7044, Respondent EPA's Second Supplemental Memorandum, August 22, 2002, at 4–7. In addition, EPA's complete response to these comments pertaining to conformity rule provisions that are not addressed in this rulemaking can be located in the response to comments document for this final rule. Copies of all these documents are located in the public docket for this rulemaking listed in Section I.B. of today's action.

Finally, one commenter stated that EPA should consider the entire SIP when determining adequacy of the budgets, as not doing so may permit conformity determinations to rely on SIPs that contain substantive flaws in inventories and control strategies for other sources. EPA would like to clarify that when we conduct an adequacy review of a submitted SIP, we always consider the SIP in its entirety as well as the budgets in that SIP. Section 93.118(e)(4)(iv) of the conformity rule requires that ''the motor vehicle emissions budget(s), when considered together with all other emissions sources, is consistent with applicable requirements for reasonable further progress, attainment, or maintenance * * *''. Therefore, EPA is required to consider emissions from other sources and their contribution towards meeting the purpose of the SIP before issuing an adequacy finding. Furthermore, some SIPs such as limited maintenance plans and those SIPs that qualify for EPA's insignificance policy do not contain budgets where certain findings are made. In these cases, EPA also focuses on the entire SIP and how such SIPs qualify for these specific policies. See the June 30, 2003 proposal to this final rule (68 FR 68983–4) for more information about EPA's adequacy review of SIPs that do not contain motor vehicle emissions budgets.

XVI. Non-Federal Projects

A. Description of Final Rule

EPA is amending § 93.121(a) of the conformity rule so that regionally significant non-federal projects can no longer be advanced during a conformity lapse unless they have received all necessary state and local approvals prior to the lapse. Non-federal projects are projects that are funded or approved by a recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Laws, but that do not require any FHWA/FTA funding or approvals. Under this final rule, recipients of federal funds cannot adopt or approve a regionally significant, non-federal project unless it is included in a currently conforming plan and TIP or is reflected in the regional emissions analysis supporting a currently conforming plan and TIP. The definition of non-federal project ''approval'' should be decided on an area-specific basis through the interagency consultation process, and should be formalized in the area's conformity SIP. For more information on how areas have defined the point of final approval for a regionally significant non-federal project, see EPA's June 30, 2003 proposed rule (68 FR 38984), which is consistent with EPA's May 14, 1999 guidance that implements the court decision.

B. Rationale and Response to Comments

In its ruling, the court found § 93.121(a)(1) of the 1997 conformity rule to be in violation of Clean Air Act section 176(c)(2)(C). This provision of the 1997 rule had allowed state or local approval of transportation projects in the absence of a currently conforming plan and TIP. The court found that the Clean Air Act requires all non-exempt projects subject to the conformity rule, including regionally significant non-federal projects, to come from a conforming plan and TIP (or included in their supporting regional emissions analysis) to be funded or approved. However, the court also noted that once

a non-federal project receives all appropriate state or local approvals, it need not meet any further conformity requirements.

Commenters generally concurred with EPA's proposed amendments to § 93.121(a) as being consistent with the court decision. One commenter stated that it is reasonable to treat federal and regionally significant non-federal projects in like manner so that neither type of project can proceed during a lapse, as required by the court. Another commenter also agreed that the definition of non-federal project ''approval'' should be determined through the interagency consultation process.

One commenter, however, requested that EPA clarify the required approach for approving non-federal projects in isolated rural areas. As stated in the June 30, 2003 proposal, the conformity rule only applies to non-federal projects that are considered regionally significant, in that these projects must be included in a conforming transportation plan and TIP and/or the regional emissions analysis supporting a conforming plan and TIP. Isolated rural areas, however, are not required to develop metropolitan transportation plans and TIPs and are not subject to the conformity frequency requirements for plans and TIPs in § 93.104 (including the 3-year conformity update requirement). A conformity determination in isolated rural areas is required only when a new non-exempt project needs federal funding or approval. Therefore, the commenter regarded the proposed rule as being unclear about whether isolated rural areas would need to conduct a separate conformity analysis that includes a new non-federal project before such a project could be funded or approved.

EPA refers this commenter to § 93.121(b) of the current conformity rule that includes the requirements for regionally significant non-federal projects in isolated rural nonattainment and maintenance areas. Section 93.121(b) states that no recipient of federal funds can approve or fund a regionally significant highway or transit project in an isolated rural area, regardless of funding source, unless: (1) The project was included in the regional emissions analysis supporting the most recent conformity determination; or (2) A new regional emissions analysis including the project and all other regionally significant projects expected in the isolated rural nonattainment or maintenance area demonstrates conformity. Such regional emissions analyses in isolated rural areas would include those projects in the statewide transportation plan and statewide TIP, including any existing or planned federal and regionally significant non-federal projects, that are in the nonattainment or maintenance area.

Although EPA has always believed that the Clean Air Act does not require project-level conformity determinations for regionally significant non-federal projects, the Clean Air Act does require such projects to be included in the regional emissions analysis supporting a conformity determination before funding or approval can be given. See the January 11, 1993 proposal to the November 24, 1993 conformity rule for further background (58 FR 3772–3773). Recognizing that isolated rural areas do not have transportation plans and TIPs, in the preamble to the November 24, 1993 conformity rule (58 FR 62208) EPA states: ''In isolated rural areas, non-federal projects may be considered to have been included in a regional emissions analysis of the transportation plan and TIP if they are grouped with federal projects in the nonattainment or maintenance area in the statewide plan and STIP for the purposes of a regional emissions analysis.'' Therefore, we would consider the statute's conformity requirements to be satisfied in an isolated rural area if a regionally significant non-federal project is included in the area's previous regional emissions analysis and conformity determination (provided the project's design concept and scope have not changed significantly since the analysis and determination were made). If the project was not included in the previous regional emissions analysis and conformity determination, a new regional emissions analysis including the project must be completed.

XVII. Conformity Consequences of Certain SIP Disapprovals

A. Description of Final Rule

Consistent with the June 30, 2003 proposal, this final rule changes the point in time at which conformity consequences apply when EPA disapproves a control strategy SIP without a protective finding. Specifically, the final rule deletes the 120-day grace period from § 93.120(a)(2) of the 1997 conformity rule, so that a conformity ''freeze'' occurs immediately upon the effective date of EPA's final disapproval of a SIP and its budgets that does not include a protective finding. A conformity freeze means that only projects in the first three years of the transportation plan and TIP can proceed. During a freeze, no new plans, TIPs or plan/TIP amendments can be found to conform until a new control strategy SIP fulfilling the same Clean Air Act requirement as that which EPA disapproved is submitted, and EPA finds the budgets in that SIP adequate for conformity purposes.

In cases where EPA does not first make an affirmative adequacy finding for a new control strategy revision that is submitted to address a disapproved SIP, EPA is also clarifying in § 93.120(a)(2) of today's rule that no new plans, TIPs or plan/TIP amendments can be found to conform during a freeze until EPA approves the submitted SIP revision. EPA is adding this clarification to § 93.120(a)(2) to address the situation when EPA conducts its adequacy review through the SIP approval process. This clarification was not included in the June 30, 2003 proposal; however, EPA does not believe that a reproposal is necessary to incorporate this minor revision in today's final rule. This minor revision simply clarifies how the conformity process currently operates in practice and is a logical outgrowth of the June 2003 proposal that described how EPA can determine adequacy through the SIP approval process because such approval actions include a finding that a submitted SIP is adequate. See Section XV.C. above for more information on adequacy reviews that are conducted through the SIP approval process.

EPA will not issue a protective finding for our disapproval of a submitted control strategy SIP (*e.g.*, reasonable further progress and attainment SIPs) if the SIP does not contain enough emission reduction measures, or commitments to such measures, to achieve its specific purpose of either demonstrating reasonable further progress or attainment. If EPA disapproves a SIP without giving it a protective finding, the budgets cannot be used for conformity upon the effective date of EPA's disapproval action. *See* the June 30, 2003 proposal for more information on issuing a protective finding when EPA disapproves a control strategy SIP.

Today's final rule does not impact the 1997 conformity rule's provisions for a SIP disapproval with a protective finding under § 93.120. This final rule also does not affect the 1997 conformity rule's flexibility that aligned conformity lapses with Clean Air Act highway sanctions (§ 93.120(a)(1)). Today's rule affects only the timing of conformity freezes for SIP disapprovals without a protective finding.

B. Rationale and Response to Comments

In its ruling, the court found the 120-day grace period provided by

§ 93.120(a)(2) of the 1997 rule to be in violation of Clean Air Act section 176(c)(1) and remanded it to EPA for further rulemaking. Specifically, the court said that where EPA disapproves a SIP without a protective finding there is no basis to believe that conformity of transportation plans and TIPs to the submitted budget in the disapproved SIP will not cause or contribute to new violations, increase the frequency or severity of existing violations, or delay timely attainment of the air quality standards.

Under § 93.120(a)(2) of the 1997 rule, if EPA disapproved a submitted SIP or SIP revision without a protective finding, areas could use the 120-day grace period to complete a conformity determination that was already in progress. The court ruled that this grace period was not authorized by the statute because it would allow conformity to be demonstrated to a SIP that was determined not to be protective of the air quality standards. Therefore, we are eliminating the 120-day grace period from the conformity rule.

Most comments on this rule revision supported the June 30, 2003 proposal. One commenter specifically stated that this change will clarify time periods and eliminate confusion regarding the conformity requirements when a SIP is disapproved. One commenter, however, did not fully agree with EPA's proposal. This commenter argued that the proposed revision to § 93.120(a)(2) still allows budgets to be used for some period after EPA disapproves a SIP without a protective finding, since such budgets could still be used in a conformity determination until the disapproval action becomes effective. The commenter objected to any rule that would allow budgets to be given effect for conformity purposes when the disapproved SIP and budgets are not consistent with reasonable further progress, attainment or maintenance.

EPA agrees that SIPs and budgets that are inconsistent with Clean Air Act requirements for reasonable further progress, attainment or maintenance, should not be used in future conformity determinations. However, EPA also believes that a specific point in the SIP disapproval process at which budgets become ''disapproved'' and unavailable for conformity purposes needs to be established to provide certainty and consistency between the conformity and SIP processes. In this final rule we are establishing that point in the process as the effective date of EPA's SIP disapproval action. EPA has linked the immediate conformity consequences of a SIP disapproval without a protective finding to the effective date of that action to be consistent with an August 4, 1994 rulemaking that established the timing and implementation of offset and highway sanctions following certain SIP failures under 40 CFR 52.31.[21] Specifically, 40 CFR 52.31(d)(1) states that ''the date of the [SIP disapproval] finding shall be the effective date as defined in the final action triggering the sanctions clock.'' In the August 1994 rulemaking, EPA has already concluded as a legal matter that a SIP disapproval, and by extension any consequences (*e.g.,* sanctions, conformity freeze, etc.) associated with that disapproval, do not take effect until the effective date of EPA's action in the **Federal Register**.

When EPA disapproves a SIP, the effective date of that action is generally only 30–60 days after the **Federal Register** publication of the disapproval. EPA believes that the minimum 30-day period is mandated by §§ 552(a)(1) and 553(d) of the Administrative Procedure Act. These provisions require the publication of actions that may adversely affect areas in the **Federal Register** to include a minimum 30-day effective date.

EPA also notes that such SIP disapprovals have occurred on a very infrequent basis, as EPA has only disapproved SIPs without a protective finding in three instances since the 1997 conformity rule was promulgated. Furthermore, for a SIP to be used in a conformity determination prior to the effective date of its disapproval, EPA would have found the SIP budget adequate. Such findings that would provide for the use of a SIP in the conformity process prior to its disapproval would not be expected in all cases, especially if the SIP is so deficient as to ultimately be disapproved without a protective finding. Therefore, EPA believes the impact of this rule change will be limited and generally will not result in the use of disapproved budgets in the conformity process.

The same commenter also argued that EPA's approval of SIPs that include enforceable commitments to adopt additional future control measures for rate-of-progress, attainment or maintenance purposes, does not meet Clean Air Act requirements for these specific SIPs. To address this issue, the commenter requested that EPA revise § 93.120 so that submitted SIPs that rely on enforceable commitments to adopt unspecified control measures could no longer be approved by EPA. The commenter argued that only SIPs that include adopted enforceable measures per 40 CFR 51.281 or written commitments to adopt specific measures that have been conditionally approved pursuant to Clean Air Act section 110(k)(4) can be approved.

EPA did not propose revisions to § 93.120 that would prohibit the full approval of SIPs that include enforceable commitments in this rulemaking, and therefore, cannot amend the conformity regulation to address this comment in today's final rule. This rulemaking merely deletes the 120-day conformity grace period from § 93.120(a)(2) in accordance with the court decision. Further, the conformity rule only provides requirements for finding budgets adequate and does not include any limitations on EPA's ability to approve SIPs.

EPA also disagrees with the commenter's position that SIPs that rely on enforceable commitments cannot be fully approved for the same reasons stated in Section XV.F.2. of this final rule. Furthermore, EPA does not believe the conformity regulations are the appropriate vehicle for specifying the criteria for approving SIP submissions. A more comprehensive response to this comment, including EPA's rationale, is included in the complete response to comments document in the public docket for this final rule. For information on how to access materials in the docket, see Section I.B. of this action.

XVIII. Safety Margins

A. Description of Final Rule

As proposed, EPA is deleting § 93.124(b) of the conformity rule that provided a narrowly targeted flexibility to areas with SIPs that had been submitted prior to the publication date of the original November 24, 1993 conformity rule. Under this provision, if an approved SIP submitted before November 24, 1993, had included a safety margin, but did not specify how the safety margin was to be used, an area could submit a revision to the SIP and specifically allocate all or a portion of the safety margin to the SIP's motor vehicle emissions budget(s). The 1997 rule allowed this SIP revision to become effective for conformity purposes before the revision had been approved by EPA. EPA is not aware of any nonattainment or maintenance areas that are currently affected by the elimination of this provision.

B. Rationale and Response to Comments

The court decision found that § 93.124(b) violated the Clean Air Act because it allowed a submitted but

[21] *See* 59 FR 39859, ''Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act''—final rule.

unapproved SIP revision to supersede an approved SIP. The court ruled that EPA must fully approve these safety margin allocations into the SIP before they can be used for conformity, regardless of whether the SIP revision and safety margin was submitted before or after our November 1993 conformity rule.

Although the court eliminated § 93.124(b) for the use of safety margins in previously approved SIPs, the majority of areas that had allocated safety margins to their budgets after November 24, 1993, were not affected by the court's ruling. In general, areas that do not have approved SIPs can use submitted safety margins in conformity determinations once EPA finds the submitted SIP (and safety margin) adequate. Areas with approved SIPs that want to reallocate their safety margin for conformity purposes can do so once EPA has approved a SIP revision that specifically allocates all or a portion of the safety margin to a budget. Presently, no area is affected by the court's ruling, since SIP submissions with safety margins have either been approved by EPA or did not revise a previously approved SIP.

EPA received three comments on the elimination of this provision based on the court's decision. Two commenters supported EPA's proposal and highlighted the potential relationship between the allocation of a safety margin and an area's ability to allow for growth in emissions from other source categories. One of these commenters specifically requested clarification on the benefits and impacts of assigning safety margins to motor vehicle emissions budgets. EPA agrees that the allocation of a safety margin to an area's budget can be an effective means to facilitate future conformity determinations. However, EPA notes that the allocation of a safety margin to the on-road transportation sector could impact an area's ability to allow growth in emissions from other source sectors (*e.g.*, stationary sources). State and local transportation and air quality agencies and other affected parties should always consult on whether a safety margin is appropriate for conformity in a given area.

Another commenter requested that the conformity rule be amended to require that maintenance areas demonstrate that Prevention of Significant Deterioration (PSD) increments will not be exceeded if the area allocates a safety margin that would allow on-road motor vehicle emissions to grow up to the level that is consistent with attainment for the area. This comment is relevant only to NO_2 and PM_{10} maintenance areas, as EPA has not established PSD increments for carbon monoxide or ozone precursors. EPA has also established increments for sulfur dioxide (SO_2); however, transportation conformity does not apply in SO_2 nonattainment and maintenance areas because on-road motor vehicles are not significant contributors to SO_2 air quality problems in these areas.

EPA does not agree that the transportation conformity rule needs to be amended to address this comment. Rather, EPA believes that the Clean Air Act and existing guidance and regulations are sufficient to prevent PM_{10} and NO_2 maintenance areas from exceeding the amount of PM_{10} or NO_2 increment that is available when these areas allocated safety margins to their budgets and NO_2 and/or PM_{10} increments have been triggered. First, section 175A of the Clean Air Act requires that an area's maintenance plan must demonstrate that the area can maintain the relevant air quality standard for a period of 10 years. According to EPA's ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' the maintenance plan must either demonstrate that future emissions will not exceed emissions that existed at the time that the request for redesignation was made or conduct a modeling analysis that shows the future mix of sources, emissions rates and control strategies for the area will not result in any violations of the air quality standard. At a minimum, areas should provide for some growth in stationary source emissions in their maintenance plans, where applicable. Therefore, any safety margin available would be emissions over and above the total amount of expected emissions, including growth in sources affected by PSD requirements.

Second, the PSD program provides an opportunity for the permit applicant and the state to consult on how to address the allocation of a safety margin to the budgets while the PSD permit application is being prepared. Such consultation between the state and the potential source of NO_2 or PM_{10} emissions helps to ensure that maintenance of the relevant national ambient air quality standard(s) is still achieved. Safety margins are expressed as a tons per day emissions rate for the entire nonattainment or maintenance area. PSD increments are expressed as a concentration of the pollutant in the ambient air (*e.g.*, $\mu g/m^3$) in the area impacted by the emissions from the stationary source. States are encouraged to evaluate periodically whether an increment is available to be used by sources that are or will be applying for a PSD permit. If a state identifies a potential problem, the state could take timely action to address the problem. EPA's guidance [22] indicates that a source which is applying for a PSD permit should consult with state and local agencies to determine the parameters that should be used to model emissions from on-road sources in the area that will be impacted by emissions from the source. During the course of this consultation, the state or local air agency should advise the applicant on how to properly account for on-road motor vehicle emissions in the area including the use of any portion of a safety margin that has been established for conformity in the SIP. In the event that a permit applicant encounters difficulty in satisfying the requirements for an increment analysis, the air quality agency would have the option of appropriately revising its SIP to allow the source to receive a PSD permit and adjust the safety margin allocation, if necessary. Finally, EPA notes that neither the Clean Air Act nor EPA's regulations and guidance require areas to assess increment consumption in connection with conformity determinations; this assessment is conducted only in connection with PSD permitting and periodic updates.

XIX. Streamlining the Frequency of Conformity Determinations

A. Description of Final Rule

EPA is finalizing several revisions to the frequency requirements listed in § 93.104 of the conformity rule, consistent with the June 30, 2003 proposal. Specifically, we are eliminating § 93.104(c)(4) that required an MPO and DOT to determine conformity of the TIP within six months of the date that DOT determined conformity of the transportation plan. As a result of this rule revision, a TIP conformity determination will no longer be triggered upon DOT's conformity determination for the transportation plan. A conformity determination for the TIP will only be required when it is updated or amended, in accordance with § 93.104(c)(1) and (c)(2). In addition, a conformity determination and new regional emissions analysis for the TIP will be required no less frequently than every three years, per § 93.104(c)(3).

EPA is also finalizing several rule revisions to streamline § 93.104(e) of the rule. In particular, we are eliminating § 93.104(e)(1) that required all

[22] NSR Workshop Manual PSD and Nonattainment Area Permitting—Draft, October 1990, page C. 36.

nonattainment and maintenance areas to determine conformity within 18 months of November 24, 1993 (*i.e.,* the date that EPA originally promulgated the conformity rule, 58 FR 62188). At this point in time, § 93.104(e)(1) is no longer relevant for any area, and therefore, we are removing it from the rule.

In addition, EPA is finalizing two revisions to § 93.104(e)(3), which requires a conformity determination within 18 months of EPA's approval of a SIP. First, we are specifying that this 18-month clock begins on the effective date of EPA's approval of the SIP. This clarification will resolve any ambiguity in the current rule as to when this 18-month clock begins.

The second revision to § 93.104(e)(3) will require a conformity determination only when a conformity determination has not already been made using that same budget in the newly-approved SIP. That is, if an area determined conformity using adequate budgets from a submitted SIP, and those budgets had not changed before EPA subsequently approves the submitted SIP, then the area would not have to redetermine conformity within 18 months of EPA's approval of the SIP. EPA believes that if approved budgets have already been used in a conformity determination, there is no added environmental benefit in requiring another conformity determination to be made within 18 months of EPA's approval of a SIP that contains these same budgets. EPA notes that budgets are unchanged if they are for the same pollutant or precursor, the same quantity of emissions, and the same year.

EPA is also eliminating § 93.104(e)(4), which required a conformity determination to be made within 18 months of EPA's approval of a SIP that adds, deletes, or changes a TCM. As stated in the June 30, 2003 proposal to this final rule, EPA believes that this requirement is redundant with the requirements in §§ 93.104(e)(2) and (3) relating to conformity determinations after other SIP approvals, and therefore, is unnecessary.

Finally, EPA is making two changes to § 93.104(e)(5), which requires a new conformity determination within 18 months of EPA's promulgation of a federal implementation plan (FIP). First, the final rule indicates that the clock for this requirement also starts on the effective date of EPA's promulgation of a FIP to be consistent with the start date of the other SIP triggers found in § 93.104(e). Second, EPA is deleting the phrase ''or adds, deletes, or changes TCMs,'' for the same reasons that we are deleting § 93.104(e)(4) discussed above. EPA believes that the purpose of § 93.104(e)(5) will be adequately served by the requirement to show conformity after EPA promulgates a FIP containing a budget.

B. Rationale and Response to Comments

In the first conformity rule proposal published in January 1993, we stated, ''EPA believes conformity determinations should be made frequently enough to ensure that the conformity process is meaningful. At the same time, EPA believes it is important to limit the number of triggers for conformity determinations in order to preserve the stability of the transportation planning process'' (58 FR 3775). As a result of these dual goals and based on experience gained through implementing the conformity rule to date, we are eliminating some of the frequency requirements found in § 93.104, and streamlining others. EPA believes that this final rule will simplify the current conformity requirements without compromising the environmental benefits of the conformity program.

Under today's rule, EPA concludes that conformity determinations will continue to be required frequently enough to ensure that the process is meaningful and consistent with the Clean Air Act. In this final rule, we have not made any changes to the requirement that new or revised plans, TIPs and projects must demonstrate conformity before they can be funded or approved. Furthermore, the final rule retains the requirement to determine conformity of transportation plans and TIPs at least every three years, as required by section 176(c) of the Clean Air Act. We are eliminating only those frequency requirements that are not expressly required by the Clean Air Act and that we now believe are either outdated or redundant with other requirements.

In general, commenters supported EPA's proposals to streamline the conformity frequency requirements. Most commenters agreed that these changes would improve the conformity rule and would serve to avoid confusion and simplify the overall conformity process. In addition, some commenters believed that these rule changes would reduce the number of required conformity determinations, and therefore, would conserve limited planning resources.

One commenter, however, opposed the elimination of the 6-month TIP clock in § 93.104(c)(4), stating that this rule change would result in MPOs having always to demonstrate conformity of the plan and TIP at the same time. This commenter believed that by eliminating the 6-month TIP clock, MPOs will lose the extra time and flexibility provided by the § 93.104(c)(4) provision that may be needed to update the TIP and demonstrate conformity after a conformity determination for the plan has been made.

EPA does not believe that the elimination of § 93.104(c)(4) and the 6-month TIP clock will result in the loss of time or flexibility for MPOs as this commenter has suggested. In contrast, EPA believes that this rule change will result in greater flexibility and less demands on planning resources to meet the conformity requirements.

As stated in the June 30, 2003 proposal, EPA believes that § 93.104(c)(4) is unnecessary because of other conformity and planning requirements that are in place. Therefore, the rule change will have no practical effect on the conformity process in most cases. According to the transportation planning statute (23 U.S.C. 134(h)(3)(C)), projects in the TIP must be consistent with the transportation plan to be federally funded or approved. Therefore, in cases where a plan is changed and a conformity determination is made, areas will continue to ensure that their TIPs also conform and are consistent with the plan to advance projects, regardless of whether the 6-month TIP trigger is part of the conformity regulation. If a plan changes in years also covered by the TIP, then the TIP would also be updated or amended to meet the planning regulations at the same time. Under today's final rule, conformity determinations will continue to be required for such plan and TIP changes. However, EPA's final rule and DOT's planning regulations would not require a TIP revision and conformity determination in the case where a plan is changed in a manner that does not affect the TIP.

Another commenter requested EPA to remove all TIP references and actions from the conformity rule, since the TIP is required to be consistent with a conforming transportation plan. The commenter believed that DOT's planning regulations and their originating legislation make EPA's TIP requirements and actions redundant and unnecessary, and that the removal of such requirements would improve the conformity rule.

EPA did not propose the removal of all TIP references and conformity requirements in this rulemaking, and therefore, cannot address the commenter's request in this final rule. Furthermore, EPA believes the current references and conformity requirements for TIPs are necessary to be consistent

with the Clean Air Act. The current Clean Air Act section 176(c)(2)(A) specifically states that ''no transportation plan or transportation improvement program may be adopted* * *'' until such plans and programs are shown to demonstrate conformity. Therefore, EPA believes that the corresponding regulations must reflect the statutory requirements for both the transportation plan and TIP.

XX. Latest Planning Assumptions

A. Change to Latest Planning Assumptions Requirement

1. Description of Final Rule

EPA is amending § 93.110(a) to change the point in the conformity process when the latest planning assumptions are determined. This final rule will allow conformity determinations to be based on the latest planning assumptions that are available at the time the conformity analysis begins, rather than at the time of DOT's conformity determination for a transportation plan, TIP, or project. Under today's final rule, the interagency consultation process should be used to determine the ''time the conformity analysis begins'' as described in B.1. and C.1 of this section.

2. Rationale and Response to Comments

EPA believes that today's final rule will make the conformity rule more workable for implementers while continuing to meet the basic Clean Air Act requirement that the latest planning assumptions be used in conformity determinations. Most commenters agreed and strongly supported EPA's proposed change to the latest planning assumptions requirement. Some of these commenters noted that the proposed changes to § 93.110(a) would provide more certainty to the process and conserve valuable state and local resources.

A few commenters, however, did not agree with EPA's proposed change. One commenter argued that the proposed rule violates the Clean Air Act by allowing conformity determinations to be based upon information other than ''the most recent population, employment, travel and congestion estimates.'' This same commenter also stated that the proposed change would undermine reasoned decision-making by making the most accurate and reliable information irrelevant since data developed after the time the analysis begins would not be required to be considered until the next conformity determination. Another commenter reiterated this concern by stating that the proposed rulemaking improperly locks-in the planning assumptions that exist at the start of the conformity determination process, even though the actual conformity determination is typically made months later when more recent information could be available.

EPA disagrees that today's proposal is inconsistent with the Clean Air Act. Section 176(c)(1) of the Clean Air Act requires conformity determinations to be based on the most recent data and emissions estimates that are available. However, the Clean Air Act does not explicitly define the point in the conformity process when the most recent estimates should be determined. Therefore, EPA believes that this ambiguity in the Clean Air Act allows for a procedural change in how the latest planning assumptions requirement is implemented.

As stated in the proposal to this final rule, when EPA originally wrote the conformity rule in 1993, we did not fully envision how the requirement for the use of latest planning assumptions would be implemented in practice. Under the previous conformity rule, if an MPO had completed a regional emissions analysis for its plan and TIP conformity determinations, and new information became available as late as the day before DOT was scheduled to make its conformity determination, DOT was not able to complete its action, as the MPO would have had to revise the conformity analysis to incorporate the new data. EPA does not believe this situation is appropriate or consistent with the overall intent of the Clean Air Act to coordinate air quality and transportation planning.

EPA also disagrees that the proposed rule revision would undermine decision-making and allow for the use of irrelevant information in the conformity process. Although EPA believes that conformity determinations should be based on the most recent data and planning information in accordance with the Clean Air Act, we also believe that the conformity rule should provide certainty in implementing the statute's requirements. In other words, EPA believes that a conformity determination that is based on the most recent information available when that analysis is conducted should be allowed to proceed even if more recent information becomes available later in the conformity process.

EPA believes it can provide this certainty, without compromising air quality, due to the iterative nature of the conformity process. A conformity determination based on the latest planning assumptions and emissions models is required at a minimum of every three years. In addition, the conformity rule (40 CFR 93.104) requires a conformity determination for plan and TIP updates and amendments and within 18 months of certain EPA SIP actions (*e.g.*, when EPA finds an initially submitted SIP budget adequate). In the case where new data becomes available after an analysis has started, such information would be required in the next conformity determination to ensure that appropriate decisions concerning transportation and air quality are being made. Therefore, EPA does not believe this rule change will provide for the general use of ''irrelevant'' data in the conformity process. Rather, EPA believes this rule change will provide a reasonable approach to ensuring that conformity is based on accurate and available information without causing unnecessary delays late in the transportation planning process. EPA concludes that today's final rule is consistent with the Clean Air Act, as it provides a reasonable time at which latest planning assumptions are determined for use in a conformity determination.

Two commenters also expressed concern about the proposed rule's potential to eliminate the public's involvement in the selection of latest planning assumptions used in conformity determinations. One of these commenters stated that the proposed rule change would defeat the ability of interested parties from playing a meaningful role in the decision-making process by making new information developed after public notice of the emissions analysis and conformity determination irrelevant. The other commenter requested clarification on the obligation of an MPO to revise a conformity determination to address public comment that questions an area's use of the most recent planning information in the conformity analysis.

EPA does not believe that today's rule change will eliminate the public's involvement in selecting the latest planning assumptions that are used in conformity determinations. For proposed transportation plan/TIP updates, amendments and conformity determinations, the public has an opportunity to comment on whether the conformity determination meets the conformity rule's requirements for using the latest planning information. Under today's rule, the public will still have this opportunity, as the amendment to § 93.110(a) makes no changes to the public involvement requirements under § 93.105(e).

EPA also does not believe that this rule change will effectively alter an MPO or other designated agency's

responsibility to respond to public comments in a manner consistent with the conformity rule's requirements. Under today's final rule, when an MPO or other designated agency conducts a conformity determination, it should document in its determination the ''time the conformity analysis begins'' as determined by interagency consultation, the date on which the analysis was started and the planning assumptions that were used. During the public process and comment period, the public will continue to have the opportunity to comment on all these aspects of the conformity analysis. If, for example, a member of the public expresses concern that planning information available before the beginning of the analysis was not used in the conformity determination, an MPO would have to address such concerns and explain why the information was not incorporated. If, when addressing this comment, the MPO and other interagency consultation partners determine that the information was available prior to the start date of the analysis, the MPO or other designated agency would be required to re-run its analysis to incorporate such data to meet the conformity rule's requirements.

In contrast to those commenters who favored the previous rule's more stringent requirement, some commenters did not believe that the proposed change to § 93.110(a) would provide enough flexibility in implementing the latest planning assumptions requirement. Specifically, these commenters requested that EPA amend the conformity rule to define the ''most recent planning assumptions available'' as those assumptions used to develop the most recent applicable SIP and motor vehicle emissions budget(s). Under the existing conformity rule, one commenter stated that the transportation sector can be unfairly forced to reduce emissions simply because planning assumptions have changed since the SIP was developed. Since the existing process can result in the use of different planning assumptions in SIPs and conformity, another commenter argued that the proposed rule still runs counter to Congressional intent and the Clean Air Act which is to provide for an integrated planning process. One commenter stated that both transportation and air quality agencies would benefit from using the same planning assumptions that were used for both conformity analyses and SIP development. Another commenter agreed with this approach, provided that the SIP was approved in the last five years.

The final rule has not been changed from the June 30, 2003 proposal in response to these comments. In the 1993 conformity rule (58 FR 62210), EPA stated that: ''It should be expected that conformity determinations will deviate from SIP assumptions regarding VMT, growth, demographics, trip generation, etc., because the conformity determinations are required by Clean Air Act section 176(c)(1) to use the most recent planning assumptions.'' For today's rulemaking, EPA did not propose to alter this aspect of § 93.110 as determined in the original conformity rule. Although EPA agrees that Congress intended for the integration of transportation and air quality planning through the conformity process, EPA believes that Congress also clearly intended for conformity to be based on the most recent planning information even if it differs from the assumptions used to develop the SIP and regardless of how recently a SIP was developed. The purpose of conformity is to ensure that emissions projected from planned transportation activities are consistent with the emissions level established in the SIP. If new planning assumptions introduced into the transportation and conformity processes result in an increase or decrease in projected emissions, EPA believes it is the responsibility of transportation and air quality agencies, along with other interagency consultation partners, to determine how best to consider the anticipated emissions change. In cases where projected emissions increase over the applicable SIP budget(s), the consultation process would be used to consider a revision to the transportation plan and TIP and/or the SIP to ensure that a conformity determination can be made and an area's air quality goals are achieved.

B. Defining the Time the Conformity Analysis Begins

1. Description of Final Rule

In the June 30, 2003 proposal, EPA requested comment on how MPOs, state departments of transportation, transit agencies, and air quality agencies would define the ''time the conformity analysis begins.'' Based on the comments received, EPA is finalizing our proposed clarification for the start of the regional conformity analysis in § 93.110(a) of today's final rule. Specifically, the final rule clarifies the time the conformity analysis begins as the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan, TIP or project on VMT and speeds and/or emissions for a conformity determination. This point should be determined through interagency consultation and used consistently for all future conformity determinations.

For example, the beginning of the analysis for a transportation plan or TIP conformity determination might be the point at which travel demand modeling begins to generate the VMT and speed data that will be used to calculate emissions estimates for the conformity determination. For smaller MPOs and rural areas that do not use a travel demand model, the beginning of the conformity analysis might be the point at which VMT projections necessary to run the emissions model are calculated based on the most recent Highway Performance Monitoring System (HPMS), population and employment data that are available at that time.

EPA does not, however, intend for the beginning of the analysis that will support a transportation plan or TIP conformity determination to be before VMT and emissions estimates have begun to be calculated. The following examples illustrate when the analysis has not yet begun:

- When the initial list of projects for the plan and TIP have been developed or before those projects have been coded into the transportation network;
- If travel or emissions modeling is conducted to preliminarily examine the impact of several potential projects or project alternatives on travel or emissions in the area; or
- When an initial schedule for completing an analysis is developed during an interagency consultation meeting.

Whatever the case, any information and assumptions that become available before actual modeling for a conformity determination has commenced would be required to be considered in that conformity determination.

2. Rationale and Response to Comments

EPA received a number of comments with suggestions for defining the time the conformity analysis begins. After thorough consideration of these comments, EPA believes this final rule adequately describes our intentions for what criteria constitute the time the analysis ''begins.''

Other suggested approaches that we received included defining the beginning of the analysis as the date on which state and local agencies submit their projects to be included in the plan and TIP; the point where model parameters and inputs have been incorporated into the travel demand model; and, the time at which a project is adopted for inclusion into a plan or TIP. EPA did not believe that these

suggestions were consistent with our intentions of having the start of the analysis represent a point in the process when actual modeling of the travel or emissions impacts of the planned transportation system on air quality has begun, since these activities can occur some time before modeling for the conformity determination occurs. EPA believes that all new planning assumptions available at the time the actual travel or emissions modeling begins, could be incorporated in a conformity determination, and therefore, it would be unreasonable to not require such data to be used.

One commenter suggested that the time the analysis begins should be necessarily after the interagency consultation process has been completed. EPA believes this approach for defining the start of the analysis could lead to confusion and is also inconsistent with our proposal, as the completion of the interagency consultation process could represent a point in time well after travel and/or emissions modeling have begun (*e.g.*, the point in time when the conformity determination is made).

Another commenter also suggested that determining the start of the analysis be the prerogative of the MPO, rather than determined through interagency consultation. EPA disagrees. EPA believes having the start of the analysis determined through interagency consultation is critical for ensuring that transportation and air quality planners work together to meet air quality goals. Several commenters also agreed that using the interagency consultation process to decide this issue is appropriate, as further discussed in C.2 of this section).

A few commenters requested that EPA provide further guidance in the final rule for defining the beginning of the analysis, as they interpreted the proposal to be ambiguous and the source of unintended consequences. EPA agrees with these commenters, and therefore, has defined the start of the conformity analysis in § 93.110(a) of today's rule based on concepts described in the preamble to the proposed rule. In addition, EPA has provided further explanation and examples in the description of this final rule of what we intend the beginning of the conformity analysis to be.

C. Implementation of Final Rule

1. Description of Final Rule

Today's final rule relies on the interagency consultation process required by § 93.105(c)(1)(i) to determine when a conformity analysis reasonably begins in a given area. Section 93.105(c)(1)(i) already requires the consultation process to be used to decide which planning assumptions and models are available for use by the MPO or other designated agencies responsible for conducting conformity analyses. The definition of when the conformity analysis begins for a given area should be well documented through the interagency consultation process. New information (*e.g.*, population or fleet data) that becomes available after the conformity analysis begins is not required to be incorporated into the current analysis if the analysis is on schedule, although an area could voluntarily include the new information at any time as appropriate. EPA encourages the MPO or other designated agency to use the interagency consultation process to inform other involved agencies of when a conformity emissions analysis has started for a given conformity determination.

To support a valid conformity determination, the MPO or other appropriate agency should also document the following information:

- How the ''time the conformity analysis begins'' has been defined through interagency consultation;
- The calendar date that the conformity analysis began; and,
- The planning assumptions used in the analysis.

Documenting this information in the actual conformity determination would inform the public of previous decisions regarding the use of latest planning assumptions, and will record when an analysis was begun, so that commenters can address any issues related to these decisions.

Today's final rule also clarifies that new data that becomes available after a conformity analysis has started is required to be used in the upcoming current conformity determination if a significant delay in the analysis has occurred before a substantial amount of work has been completed. For example, an MPO starts a conformity analysis and begins generating VMT estimates from the travel demand model. However, the MPO's analysis is then delayed for six months. In this case, EPA believes it is reasonable to expect that an MPO should incorporate new planning information that became available during the six-month delay period. Under today's final rule, the interagency consultation process would be used to determine whether a significant delay has occurred and whether new data that becomes available during a delay should be incorporated.

EPA intends that in cases where areas adhere to their conformity determination schedules and such delays do not occur, the incorporation of new information that becomes available after the conformity analysis has begun is not required. The final rule only requires the incorporation of new information when an area falls significantly behind in completing a conformity analysis, as determined through interagency consultation.

Areas should consider the availability of new planning assumptions when determining their conformity schedules. The consultation process should continue to be used to determine what are the most recent assumptions available for SIP development, so that they can be incorporated into the conformity process expeditiously. For example, if EPA is expected to find a new SIP budget adequate before the MPO or DOT's conformity determination, conformity to the new SIP budget would be required. In such a case, transportation planners should use the more recent assumptions in the submitted SIP and consider them at the start of the conformity analysis, since the more recent assumptions would have been available through the consultation process when the SIP was being developed. State and local air agencies should continue to inform their transportation counterparts of new assumptions as they become available.

This final rule addresses only when latest planning assumptions must be considered and does not change the requirement that DOT's conformity determination of the transportation plan and TIP must be based on an analysis that is consistent with the proposed transportation system. For example, if a regionally significant project is significantly changed after the start of the conformity analysis, such a change must be reflected in the conformity analysis for the current determination. Likewise, a significant change in the design concept and scope of an emissions reduction program would also have to be reflected before DOT makes its conformity determination.

Today's proposal also does not change the requirements of § 93.122(a) which describes when emissions reduction credit can be taken in regional emissions analyses. Section 93.122(a)(2) continues to require that analyses reflect the latest information regarding the implementation of TCMs or other control measures in an approved SIP, even if a measure is cancelled or changed after the conformity analysis begins. In addition, § 93.122(a)(3) continues to require that DOT's conformity determination be made only when regulatory control programs have been assured and will be implemented

as described in the SIP. However, consistent with the rule change on availability of latest planning assumptions, today's rule allows areas to rely upon the latest existing information as documented at the beginning of the conformity analysis regarding the effectiveness of SIP control programs that are being implemented as described in the SIP (§ 93.110(e)).

Finally, § 93.122(a)(6) is similarly not amended by today's action. The conformity rule continues to require that the conformity analysis be based on the same ambient temperature and other applicable factors used to establish the SIP's motor vehicle emissions budget.

2. Rationale and Response to Comments

Many commenters agreed that the interagency consultation process should be central in determining the beginning of the conformity analysis. Given the unique circumstances of individual areas, some commenters believed that the interagency consultation process would provide a common sense approach to implementing the proposed § 93.110(a). One commenter also believed that EPA's approach for relying on interagency consultation for determining if an analysis is delayed and whether more recent data should be used is appropriate. This commenter argued that such an approach would provide for greater flexibility and local decisionmaking. EPA agrees with these comments to use the interagency consultation process to account for differences in the planning and conformity processes among individual nonattainment and maintenance areas.

One commenter, however, expressed concern over EPA's proposal to require the use of more recent data that has become available if an analysis is delayed. The commenter stated that this proposal lacked specificity and could potentially nullify the proposed flexibility provided by the revised § 93.110(a).

EPA believes that in cases where a significant delay in the start of the analysis has occurred and more recent data becomes available during that time, the new data must be included in the conformity determination. In response to this comment, EPA has clarified in the final rule that new data that becomes available after an analysis has begun is required to be used in the upcoming conformity determination if a significant delay in the analysis has occurred. As described above, EPA has provided further explanation and examples to more fully depict our intentions for this requirement in the description of this final rule. Interagency consultation would be used, following Section C.1. above, to decide whether a conformity analysis has been delayed and whether any new data has become available during the delay that would be incorporated into the conformity process.

Another commenter requested that the final rule require an MPO to incorporate new planning assumptions that become available after an analysis has started, if changes to other aspects of a conformity determination (*e.g.*, data, conclusions or assumptions) are made once the analysis has begun. In such cases, this commenter believed that the planning assumptions should again be reviewed, and if they have changed, such newer assumptions should be incorporated in the conformity determination along with any other changes the MPO is conducting.

As previously stated, EPA believes that once a conformity analysis begins, it is appropriate to allow that analysis to continue without requiring the incorporation of newer planning information, provided the conformity analysis and determination remain on schedule, as determined through interagency consultation. EPA does not believe that new planning information should be required if changes to the conformity analysis are made that do not cause a significant delay. However, in this case, EPA encourages areas to consider incorporating new information that has become available since the analysis began if other changes are initiated and new data can also be easily incorporated.

EPA believes it is appropriate to require the use of more recent planning assumptions that become available after a conformity analysis begins only if significant delays in completing the conformity analysis have occurred. Therefore, if an MPO or other designated agency initiates a change to the conformity analysis that causes a significant delay, EPA believes that any new planning information that has become available since the analysis began should be required in that conformity determination, as determined by the interagency consultation process.

Finally, several commenters requested clarification on various aspects of implementing the use of latest planning assumptions in conformity. Specifically, one commenter requested EPA to indicate in the final rule what newer information that becomes available will be required in a conformity determination even after the latest planning assumptions have been agreed upon through interagency consultation. This commenter stated that the final rule should specify those assumptions to avoid ambiguity.

EPA believes that § 93.110 of the current conformity rule provides a detailed description of the latest planning assumptions that must be incorporated in a conformity determination. For example, § 93.110(b) states that assumptions must be derived from the most recent estimates of current and future population, employment, travel, and congestion. Sections 93.110(c) and (d) require using the latest planning information on transit fares, service levels and ridership, as well as road and bridge tolls. In addition, § 93.110(e) specifies that conformity determinations must include the latest existing information regarding the effectiveness of transportation and other control measures that have been implemented. Under today's rule, an area's interagency consultation process would determine the most recent data and information available to meet § 93.110 requirements at the beginning of the conformity analysis. Provided the analysis starts on time and adheres to the conformity determination schedule, any updates to this information would not be required to be used until the next conformity determination.

However, this final rule does not change any other provision of the conformity rule. For example, this final rule does not change the requirement that DOT's conformity determination of the transportation plan and TIP be based on an analysis that is consistent with the proposed transportation system. In addition, the final rule does not change the existing requirements for determining regional transportation emissions under § 93.122. For example, as described above, § 93.122(a)(2) continues to require that analyses reflect the latest information regarding the implementation of TCMs or other control measures in an approved SIP, even if a measure is cancelled or changed after the beginning of the conformity analysis. EPA believes the requirements of both §§ 93.110 and 93.122 are clear and provide sufficient direction to implement today's final rule, and therefore, EPA has not made any further clarifications to these requirements in response to this comment.

Another commenter requested that EPA clarify in the final rule that MPOs may demonstrate conformity without being required to wait for changes in planning data that are not actually available. This commenter suggested that in some areas conformity determinations have been delayed to

incorporate anticipated data (*e.g.*, new Census data) that was not actually available at the time the determination was originally scheduled to be made.

The Clean Air Act and conformity rule do not require MPOs to delay their conformity analyses to incorporate anticipated data that is not yet available for conformity purposes under any circumstances. The conformity rule, as amended in today's action, only requires conformity determinations to incorporate the most recent planning information available at the time the conformity analysis begins. Under this final rule, areas should use the interagency consultation process to determine the start of the analysis and the planning assumptions that are available and will be used in that analysis.

Two commenters asked for clarification on the requirements of § 93.122(a)(6) as they relate to planning information used in regional emissions analyses. Section 93.122(a)(6) requires regional emissions analyses to include the same ambient temperatures and other applicable factors that were used to develop the SIP and budgets. However, since § 93.110 requires the use of the most recent planning assumptions available in conformity, one commenter requested clarification on the specific ''factors'' that § 93.122(a)(6) targets. One of these commenters also requested clarification on whether this provision of the rule should be applied to project level hot-spot analyses. This commenter argued that localized data can be more accurate than regional estimates in some cases, and therefore, should be used in hot-spot analyses.

In contrast to those planning assumptions described in § 93.110 (*e.g.*, population, employment, vehicle fleet composition), EPA intended § 93.122(a)(6) to apply to certain planning factors that would not be expected to change significantly over time in a given geographical area. For example, factors referred to in § 93.122(a)(6) would include environmental conditions such as ambient temperatures, humidity and altitude. Other factors subject to § 93.122(a)(6) could also include the fraction of travel in a hot stabilized engine mode and annual mileage accumulation rates over the time frame of the transportation plan. Since factors such as environmental conditions and certain vehicle use characteristics that do not typically change in future years could significantly impact emissions, EPA generally believes that it is appropriate to require such factors to be consistent between conformity analyses and the SIP budgets.

Under certain circumstances, however, it may be appropriate to use alternative factors instead of certain SIP assumptions, if it is determined through the interagency consultation process that these factors should be modified as provided for in § 93.122(a)(6). For example, such modifications in these types of factors may be appropriate where additional or more geographically specific information is incorporated or a logically estimated trend in such factors beyond the period considered in the SIP is represented. EPA does not expect changes in the SIP's factors to occur often, and they could occur only after interagency consultation. These factors, along with all other planning assumptions used in a conformity analysis, must be documented in the conformity determination that is released for public comment.

Finally, § 93.123(c)(3) of the conformity rule requires hot-spot analysis assumptions to be consistent with those assumptions used in the regional emissions analysis for those inputs which are required for both analyses. Therefore, the requirements of § 93.122(a)(6) also apply to hot-spot analyses; those factors covered by § 93.122(a)(6) used in regional emissions analyses generally need to be the same as those in hot-spot analyses. However, EPA believes the existing § 93.122(a)(6) provides flexibility to use different information for certain environmental and transportation-related factors (*e.g.*, temperature, cold-start vehicle travel) in hot-spot analyses, if it is determined through interagency consultation that there is a sound basis for using more localized geographic data. Areas should use the interagency consultation procedures established under § 93.105 to determine whether more localized data is appropriate in hot-spot analyses.

XXI. Horizon Years for Hot-Spot Analyses

A. Description of the Final Rule

Today's final rule clarifies § 93.116 of the conformity rule so that project-level hot-spot analyses in metropolitan nonattainment and maintenance areas must consider the full time frame of an area's transportation plan at the time the analysis is conducted.[23] Regional emissions analyses in isolated rural areas also cover a 20-year timeframe, consistent with the general requirements in metropolitan and donut areas. Alternatively, hot-spot analyses for new projects in isolated rural nonattainment and maintenance areas, as defined in today's rule, must consider the full time frame of the area's regional emissions analysis since these areas are not required to develop a transportation plan and TIP under DOT's statewide transportation planning regulations. All areas would use the interagency consultation process to select the specific methods and assumptions for conducting both quantitative and qualitative hot-spot analyses in accordance with § 93.123 of the conformity rule (§ 93.105(c)(1)(i)).

EPA does not anticipate that today's clarification would significantly change how project-level analyses are being conducted in practice. To ensure that the requirement for hot-spot analysis is being satisfied, areas should examine the year(s) within the transportation plan or regional emissions analysis, as appropriate, during which peak emissions from the project are expected and a new violation or worsening of an existing violation would most likely occur due to the cumulative impacts of the project and background regional emissions in the project area. EPA believes that if areas demonstrate that no hot-spot impacts occur in the year(s) of highest expected emissions, then they will have shown that no adverse impacts will occur in any years within the time frame of the plan (or regional emissions analysis).

Today's final rule does not change the procedural requirements for hot-spot analyses outlined in § 93.123, nor the flexibility for areas to decide how best to meet these requirements through interagency consultation. We believe our clarification to § 93.116, in combination with the rule's existing consultation and modeling requirements, is sufficient to demonstrate that a project will not cause or contribute to new local violations or increase the severity of existing violations during the period of time covered by the transportation plan.

B. Rationale and Response to Comments

On May 26, 1994, Environmental Defense, Natural Resource Defense Council and Sierra Club collectively submitted to EPA a Petition for Reconsideration of the November 1993 conformity rule (58 FR 62188). In the preamble to an April 10, 2000 conformity rule (65 FR 18913), we addressed four remaining issues raised in this petition, one of which was the issue regarding horizon years for hot-spot analyses. Specifically, the petitioners requested that we alter the rule to ensure that areas examine the 20-year time frame of the transportation

[23] Under DOT's current planning regulation, transportation plans in metropolitan nonattainment and maintenance areas need to be updated every three years and cover at least a 20-year planning horizon (23 CFR 450.322(a)).

plan when conducting hot-spot analyses. The existing transportation conformity rule does not clearly specify a time frame to be considered for hot-spot analyses.

In the preamble to the 2000 amendment, we acknowledged that hot-spot analyses should address the full time frame of the transportation plan to ensure that new projects will not cause or worsen any new or existing hot-spot violations. In addition, we clarified that in some cases modeling the last year of the transportation plan or the year of project completion may not be sufficient to satisfy this requirement. EPA believes that the most effective means to meet this requirement would be to have the hot-spot analysis examine the year(s) during the time frame of the plan in which project emissions, in addition to background regional emissions in the project area, are expected to be the highest. Today's final rule simply incorporates EPA's existing interpretation of the rule's hot-spot requirements into the conformity regulations.

EPA received a number of comments on our proposed clarification of § 93.116. One commenter believed that the transportation planning process should not be interrupted due to the inexact data on which the process is based.

Today's changes to § 93.116 do not impose any new requirements. Rather, this final rule clarifies that when a hot-spot analysis is performed, the year or years that are analyzed must be the year(s) when project emissions, in addition to background regional emissions in the project area, are expected to be the highest and violations are most likely to occur. We believe that most areas are already successfully complying with this hot-spot requirement, and consequently, changes to the existing planning process due to the final rule are not expected.

The remaining commenters requested additional guidance on implementing the clarification to § 93.116. Specifically, one commenter indicated that their state currently requires CO hot-spot analyses for new projects in nonattainment and maintenance areas to examine air quality impacts of the project over a period extending up to 20 years after the project opens. This commenter argued that this protocol for analyzing the year of project completion and a horizon year typically 20 years from project completion is very likely to capture the highest emissions expected from the project. However, the commenter was concerned that EPA's clarification to § 93.116 may not allow continued use of this protocol.

EPA does not believe that the hot-spot analysis procedures employed by this state are necessarily inconsistent with today's clarification. In fact, this protocol could be more conservative since it requires the analysis of years beyond the 20 year time frame of an area's transportation plan or regional emissions analysis. EPA does not believe that the clarification to § 93.116 would cause this state to revise its requirements for hot-spot analyses in most cases. EPA should note, however, that all hot-spot analyses performed in any nonattainment or maintenance areas should consider whether the combination of project emissions and background emissions could result in a violation occurring prior to the final year of the analysis period. Further, since areas are required to prevent hot-spot violations in years covered by the transportation plan, states should ensure that the use of the year of estimated highest projected emissions for a given project is sufficient to demonstrate that no violations would be expected during this time frame. Decisions regarding such analyses and year(s) chosen for hot-spot analyses should be determined through an area's interagency consultation process.

Another commenter requested clarification as to whether areas would be required to analyze more than one year if peak project emissions and peak background emissions are expected to occur in different years. EPA does not intend for the revised § 93.116 to require areas to analyze multiple years in all cases where peak project emissions and background emissions occur at different points in time. Instead, EPA intends for areas to analyze the year in which combined project and background emissions could most likely cause a violation or worsen an existing violation of the air quality standard. In some cases, however, a more conservative approach to meeting the conformity rule's requirements for hot-spot analyses would be to analyze more than one year within the time frame of the transportation plan or regional emissions analysis depending upon the local circumstances regarding peak project and background emissions. An area's interagency consultation process should be used to determine the appropriate year(s) for conducting hot-spot analyses in this type of situation.

One commenter requested that EPA revise the clarification to § 93.116 to take into account the situation where a project would not remain in place over a 20-year time period. This situation could occur if a project is scheduled to be built and opened for use in stages. Specifically, the commenter requested that the clarification be revised to require that the hot-spot analysis cover the time frame of the plan ''or time frame of the proposed project, whichever is shorter.''

EPA does not believe that this commenter's suggested clarification is necessary. In the case of a project that is being built and opened for use in stages, the conformity rule allows the area's interagency consultation process to select the appropriate hot-spot analysis years. EPA believes that in these cases the local consultation process provides the best forum for deciding how to model such projects appropriately. Furthermore, the clarification to § 93.116 allows areas to select an appropriate analysis year(s) to demonstrate that the project conforms over the entire time frame of an area's transportation plan or regional emissions analysis. It is likely that when a project is opened in stages, more than one analysis year may be necessary to satisfy the hot-spot requirements, as various years could produce significantly different emissions. For example, if a project were being opened in two stages and the entire two-stage project was being approved, the interagency consultation process may result in a decision to analyze two years. In this case, the first analysis year would be chosen to examine the impacts of the first stage of the project, such as a year between the opening of the first stage and the opening of the second stage of the project. The second analysis year would be chosen to examine the impacts of the complete project, such as a year between the opening of the second stage and the final year of the area's transportation plan or regional emissions analysis. Finally, EPA does not believe that the final rule is problematic with respect to projects that do not remain in effect for the entire time frame of the 20-year transportation plan. For example, if a project is only scheduled to be implemented for the first 10 years of the transportation plan, there would be no projected emissions from that project to consider for hot-spot analysis in the latter 10 years of the plan.

Another commenter encouraged EPA and DOT to issue hot-spot guidance that maintains and enforces significance thresholds and consider more stringent mitigation measures for exceedances of the thresholds. EPA does not believe that the requested guidance is needed or required to implement the Clean Air Act or conformity rule's requirements for ensuring that localized emissions from a new project do not cause or contribute to violations of the air quality standards. EPA believes that section 176(c)(3)(B)(ii)

of the Clean Air Act and § 93.116 of the conformity rule establish sufficient requirements for addressing localized air quality problems in CO and PM_{10} nonattainment and maintenance areas. Further, EPA does not believe that exceedances of significant threshold levels would necessarily contribute to increased violations of a given air quality standard.

Finally, one commenter asked when EPA intends to issue guidance on quantitative PM_{10} hot-spot analyses, as referred to in § 93.123(b)(4) of the conformity rule. As part of the November 5, 2003 proposal (68 FR 62690), EPA requested comment on the experience areas have had in applying the conformity rule's PM_{10} hot-spot analysis requirements and on the need to maintain or amend these requirements. As noted in Section XIII. of today's action, EPA intends to decide on the PM_{10} hot-spot analysis requirement, including needs for quantitative analysis guidance, based on our review of comments from the November 2003 proposal and a future supplemental proposal.

XXII. Relying on a Previous Regional Emissions Analysis

A. Description of Final Rule

EPA is finalizing three revisions to § 93.122(g), which describes when an area can rely on a previous regional emissions analysis for a new conformity determination. EPA notes that the provisions for relying on a previous analysis were located in § 93.122(e) of the former conformity rule, but are being moved to § 93.122(g) due to reorganization of this section. First, EPA is revising § 93.122(g) so that MPOs can rely on a previous regional emissions analysis for minor transportation plan revisions. Prior to today's final rule, § 93.122(g) (§ 93.122(e) of the previous conformity rule) allowed areas to rely on a previous emissions analysis only for conformity determinations made for minor TIP updates or amendments. To meet § 93.122(g) requirements, minor revisions to the transportation plan may include no additions or deletions of regionally significant projects, no significant changes in the design concept and scope of existing regionally significant projects, and no changes to the time frame of the transportation plan. Further, minor plan revisions under § 93.122(g) would not include revisions that delay or accelerate the completion of regionally significant projects across conformity analysis years.

EPA's second revision adds § 93.122(g)(3) to clarify that a conformity determination that relies on a previous analysis does not satisfy the three-year frequency requirement for plans and TIPs. The conformity rule continues to require a new regional emissions analysis that incorporates the latest planning assumptions and emissions models at least every three years. In response to comments EPA received on this proposed rule change, EPA is also clarifying the three-year regional emissions analysis requirement in § 93.104(b) and (c) of the rule.

EPA's third revision adds § 93.122(g)(1)(iv) and amends § 93.122(g)(2) to clarify that conformity determinations that rely on a previous regional emissions analysis must be based on all adequate and approved SIP budgets that apply at the time that DOT makes its conformity determination. Like all conformity determinations, a determination that relies on a previous emissions analysis must satisfy the emissions test requirements of § 93.118 (or of § 93.119, if no applicable budgets exist), and must do so over the time frame of the transportation plan. Therefore, EPA believes that pursuant to § 93.118(a) of the current rule, any conformity determination that relies on a previous emissions analysis must show consistency with all applicable adequate or approved budgets that are available for conformity purposes at the time the determination is made, including those budgets that have become applicable since the previous conformity determination. In other words, in cases where new adequate or approved budgets become available after the most recent conformity determination, the previous regional emissions analysis could be used for a subsequent determination if the emissions estimates from that analysis are at or below the emissions levels established by the new budgets for relevant years and all other § 93.122(g) requirements are met. In this case, the conformity determination that includes the new budgets would also satisfy any applicable 18-month conformity requirement, pursuant to § 93.104(e) that is triggered by EPA's adequacy finding and/or approval action of the new SIP budgets.

This final rule applies to conformity determinations for plans, TIPs, and projects not from a conforming plan and TIP. EPA expects that most conformity implementers already consider new budgets when they rely on a previous emissions analysis. Today's final rule simply clarifies existing requirements and ensures that the conformity regulation continues to be correctly implemented in the future.

EPA also notes that we are not altering the existing § 93.122(g)(2)(i) and (ii) provisions in today's final rule, as the June 30, 2003 proposed regulatory text may have been confusing with regard to the specific changes that were proposed. In the preamble to the June 30, 2003 proposed regulatory text, we stated that we were amending § 93.122(g)(2) to clarify that a conformity determination that relies on a previous emissions analysis must be based on all adequate and approved budgets that apply when the determination is made. However, we only intended to amend the introductory text for § 93.122(g)(2) and did not intend to delete the existing subparagraphs § 93.122(g)(2)(i) and (ii) for this provision, as may have appeared from the printed regulatory text. Therefore, we are now clarifying that subparagraphs § 93.122(g)(2)(i) and (ii) still apply. That is, a project that is not from a conforming plan and TIP may be demonstrated to conform without a new regional emissions analysis if the project is either not regionally significant, or is included in the currently conforming transportation plan (even if it is not included in the currently conforming TIP) and its design concept and scope have not significantly changed and are sufficient for determining regional emissions. EPA believes that a reproposal is not necessary to make this correction in today's final rule, as this clarification is consistent with EPA's original intentions and stakeholders' understanding of the proposed revision to the § 93.122(g)(2) provision.

B. Rationale and Response to Comments

EPA believes that relying on a previous emissions analysis for minor transportation plan changes is appropriate, since such changes do not impact regional air quality and usually occur in tandem with minor TIP updates and amendments. The purpose of § 93.122(g) is to allow areas to use a previous emissions analysis when no significant changes to the transportation system are being made. Through implementing § 93.122(g) over the years (as § 93.122(e)), EPA has concluded that because plan and TIP updates often occur together, the purpose of this provision has been frustrated due to the rule's past applicability only to TIPs, but not plans.

Most commenters supported EPA's proposal to allow areas to rely on a previous emissions analysis for minor transportation plan revisions. As stated in the June 30, 2003 proposal, the purpose of this final rule is to require a new regional emissions analysis only for transportation actions that involve

significant air quality impacts and at least every three years. One commenter, however, requested clarification on whether changes or additions to a plan and TIP would be determined ''significant'' through the interagency consultation process.

EPA articulates its intentions for when transportation planners can rely on a previous emissions analysis in the existing conformity rule and the preamble to the November 24, 1993 conformity rule. Specifically, in the 1993 final rule, we stated that a new regional analysis would not be required ''if the only changes to the TIP involve either projects which are not regionally significant and which were not or could not be modeled in a regional emissions analysis, or changes to project design concept and scope which are not significant * * * '' (58 FR 62202). Today's final rule clarifies that a previous analysis can only be used under similar circumstances for the plan, and when the time frame of the transportation plan has not changed. Under the consultation provisions of the conformity rule, the interagency consultation process should be used to determine which projects are ''regionally significant'' for the purposes of regional emissions analyses, and which projects have a significant change in design concept and scope (§ 93.105(c)(2)(ii)). Therefore, EPA believes that the conformity rule clearly specifies that an area's interagency consultation process should be used for determining whether any changes or additions to a plan and/or TIP are not ''significant'' for the purposes of relying on a previous emissions analysis in accordance with § 93.122(g).

Another commenter requested EPA to identify comprehensively the circumstances when reliance on a previous regional emissions analysis would not be appropriate. Specifically, this commenter asked EPA to clarify that an area cannot rely on a previous analysis if new or revised planning assumptions and/or emissions models become available after the previous conformity determination. The commenter also requested that EPA clarify that an area cannot rely on a previous emissions analysis when new SIP budgets have become available for conformity purposes since the last determination. The commenter argued that since the Clean Air Act requires conformity determinations to be based on the most recent planning assumptions and emissions estimates, the conformity rule should require a new regional emissions analysis for all minor plan and TIP changes if new planning information becomes available after the previous analysis and conformity determination are made.

In general, EPA agrees that Clean Air Act section 176(c)(1)(B)(iii) requires conformity determinations to be based on the most recent estimates of emissions. However, we also believe that Clean Air Act section 176(c)(4)(B)(ii) gives EPA discretion in establishing the requirements for a new regional emissions analysis when a minor change to a transportation plan and/or TIP is made. Specifically, section 176(c)(4)(B)(ii) requires EPA to promulgate conformity rules that ''address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years, * * *.'' To satisfy this statutory requirement, EPA promulgated rules in 1993 (58 FR 62188) that require a new regional emissions analysis and conformity determination to be conducted at a minimum of every three years and when a significant change to the TIP is made between the three-year conformity frequency requirement.

EPA does not believe that the Clean Air Act requires a new regional analysis to be triggered between three-year conformity updates in the case when minor project changes are made to the plan or TIP that would not affect regional emissions. Since the original November 24, 1993 conformity rule, EPA has held that only the three-year conformity frequency requirement and transportation actions that involve significant air quality impacts should drive the necessity for a new regional emissions analysis that incorporates the most recent planning information. EPA does not believe, however, that a new emissions analysis should be required for the sole purposes of incorporating new planning information or models in between the three-year minimum conformity requirement. The conformity rule has never required a new emissions analysis in this case and EPA is not reopening this aspect of § 93.122(g) in this rulemaking.

As we have stated elsewhere in this final rule, conducting conformity determinations and regional emissions analyses to satisfy the conformity rule requires a significant amount of state and local resources. In the January 11, 1993 conformity proposal, we stated that ''conformity determinations should be made frequently enough to ensure that the conformity process is meaningful. At the same time, EPA believes it is important to limit the number of triggers for conformity determinations in order to preserve the stability of the transportation planning process'' (58 FR 3775). EPA believes that requiring a new regional emissions analysis to incorporate new data and models for minor changes to transportation systems would essentially result in another conformity trigger whenever planning assumptions or models are updated. EPA believes such a trigger would be overly burdensome and in contrast with our stated goals of implementing a meaningful conformity process that limits disruption to the transportation planning process.

In the 1993 conformity rule, EPA concluded that areas should be granted flexibility for meeting the conformity requirements for minor interim TIP updates and amendments under § 93.122(g), even if new planning information becomes available after the previous analysis and conformity determination are made. See the January 11, 1993 proposal to the November 24, 1993 rule (58 FR 3778) for further background. EPA continues to believe such flexibility is appropriate and consistent with statutory requirements, and is not re-proposing nor re-opening the existing § 93.122(g) requirement for minor TIP changes in this rulemaking. This final rule simply extends § 93.122(g) requirements to minor plan revisions for consistency purposes. EPA believes this rule change will not have a significant impact on air quality, as the rule's existing frequency requirements will ultimately ensure that timely emissions analyses are conducted so that air quality is not worsened over the time frame of the long range transportation plan.

In addition, EPA has always believed that requiring a new regional emissions analysis simply because new SIP budgets have become available since the last conformity determination is also unnecessary. In our 1993 proposed conformity rule, we specifically stated, ''If the existing emissions analysis for the current transportation plan demonstrates that the current plan is consistent with the new implementation plan budget, a conformity finding can be made for the current plan. The transportation plan would not need to be revised and a new regional emissions analysis would not be necessary'' (58 FR 3775). Today's rule ensures that any adequate or approved budgets that have become available since the previous conformity determination are incorporated in subsequent determinations. However, EPA believes that it is unnecessary to require a new regional emissions analysis when new budgets are incorporated, if a minor revision to the plan/TIP meets the current requirements of § 93.122(g) and

conforms to the new budgets for relevant years. Again, EPA has not reopened this previous conclusion in today's rulemaking.

A few commenters also disagreed with the new provision, § 93.122(g)(3), that clarifies that a conformity determination that relies on a previous regional emissions analysis does not satisfy the three-year frequency requirement for plans and TIPs. These commenters believe that conformity determinations that rely on a previous analysis should not be treated differently from any other determination. One of these commenters argued that since the frequency requirements in § 93.104 do not specifically include a requirement to perform a new regional emissions analysis, a conformity determination that relies on a previous analysis meets all the applicable conformity criteria and should satisfy the three-year conformity frequency requirement. The commenter also stated that requiring a conformity determination with a new analysis to meet the three-year conformity requirement shortly after making a conformity determination that relies on § 93.122(g), would place an inappropriate burden on states and MPOs with no significant air quality benefit.

As previously stated, EPA has always interpreted the Clean Air Act as requiring a conformity determination with a new regional emissions analysis that incorporates the latest planning information and models at a minimum of every three years. In our 1993 conformity proposal, we specifically stated that an ''emissions analysis must occur at least every three years'' (58 FR 3775), and we believe this requirement is necessary to fulfill the Clean Air Act's three-year conformity frequency requirement. Further, EPA has concluded that a new emissions analysis every three years will provide significant air quality benefits that justify the additional effort. As a result of this interpretation, we believe that Clean Air Act section 176(c)(4)(B)(ii) precludes a conformity determination that is based on a previous regional emissions analysis from satisfying the three-year requirement. EPA believes that the existing rule's requirements for a new regional emissions analysis that incorporates the latest planning information and models every three years, and for plan/TIP updates and amendments that include significant changes, are important for ensuring that transportation activities are consistent with an area's clean air goals. Thus, EPA cannot agree with these commenters' request.

However, EPA agrees that the requirement for a new regional emissions analysis every three years could be clarified. Therefore, in response to this comment EPA is clarifying in § 93.104(b)(3) and (c)(3) of today's action that MPOs and DOT must make a conformity determination that includes a new regional emissions analysis for transportation plans and TIPs no less frequently than every three years. This minor revision to § 93.104 will not change existing requirements or implementation practices, as EPA expects that all metropolitan nonattainment and maintenance areas already conduct a new regional emissions analysis at a minimum of every three years. This rule revision simply clarifies existing requirements and ensures that the conformity regulation continues to be correctly implemented in the future.

Finally, one commenter requested that EPA expand § 93.122(g) so that a minimal number of new projects and/or project revisions could be added to a plan or TIP without having to do a new conformity determination at all. Such an approach, as suggested by this commenter, could be considered as a ''de minimis test'' for triggering a new determination.

EPA does not believe that the Clean Air Act permits minor plan and TIP changes to occur without a conformity determination. Clean Air Act section 176(c) states that no approval or funding of any transportation plan, TIP or project can be granted unless that plan, TIP or project conforms. Therefore, the statute does not support the addition of a minimal number of new non-exempt projects and/or project revisions to the transportation plan or TIP without a conformity determination. In addition, the existing conformity rule already includes a list of exempt projects that never need conformity determinations due to their minimal air quality impact (§ 93.126). EPA believes that only plan and TIP updates involving these exempt projects should be allowed to proceed without a conformity determination.

Furthermore, § 93.122(g) of the conformity rule already provides a streamlined process for meeting the conformity requirement for minor plan and TIP changes in between the three-year conformity requirement by eliminating the need for a new regional emissions analysis. EPA believes this provision provides appropriate flexibility in meeting the statute's requirements, as well as a necessary ''check'' to ensure through the interagency consultation and public processes that such plan/TIP changes are indeed insignificant with regard to air quality. In addition, such determinations ensure that other requirements of the Clean Air Act and conformity rule (*e.g.*, timely implementation of TCMs) are satisfied.

XXIII. Miscellaneous Revisions

A. Definitions

In today's rulemaking, EPA is clarifying the conformity rule's definitions for ''control strategy implementation plan revision,'' ''milestone,'' ''donut areas,'' and ''isolated rural nonattainment and maintenance areas'' in § 93.101. Today's clarifications to these definitions should not impose any new requirements on nonattainment and maintenance areas; these rule revisions simply clarify EPA's original intent and current implementation of the existing conformity rule.

Control Strategy Implementation Plan Revision

The final rule clarifies that any implementation plan revisions that are submitted to fulfill any of the following Clean Air Act requirements are considered control strategy SIPs for conformity purposes: section 172(c) and 187(g) or 189(d), in addition to the currently listed sections 182(b)(1), 182(c)(2)(A), and 182(c)(2)(B) for ozone areas; section 187(a)(7) for CO areas; sections 189(a)(1)(B) and 189(b)(1)(A) for PM_{10} areas; and sections 192(a) and 192(b) for NO_2 areas. We are also clarifying that any SIP that is established to demonstrate reasonable further progress and/or attainment should be considered a control strategy SIP.

Several commenters supported EPA's clarification to the definition since it did not change the conformity frequency requirements in § 93.104(e). Specifically, these commenters understood that the definition change would not alter how initial submissions of control strategy SIPs or approvals of control strategy SIPs would trigger the 18-month frequency requirement for a new conformity determination. EPA agrees with these comments.

Another commenter believed that maintenance plans required under section 175A also constitute control strategy SIPs and suggested that this type of SIP be added to the definition. EPA disagrees with this comment. Control strategy implementation plans are plans developed by nonattainment areas for reasonable further progress or attainment purposes, as indicated by the above referenced Clean Air Act sections. In contrast, maintenance plans are developed by areas once they have

attained the applicable standard and, as such, would not fit this definition. Maintenance plans are already defined in § 93.101 of the conformity rule, and § 93.118 distinguishes between how control strategy SIPs and maintenance plans are applied when regional emissions analyses are completed with SIPs. For these reasons, EPA will not expand the definition of control strategy SIP to include maintenance plans.

Milestone

Similarly, EPA is expanding the current definition of milestone to more adequately reflect EPA's original intent and implementation of this term. The final rule expands this definition so that it includes any year for which a motor vehicle emissions budget has been established to satisfy Clean Air Act requirements for demonstrating reasonable further progress. This definition includes all years in the applicable SIP for which emissions targets showing progress towards attainment are established in any nonattainment area.

Several commenters supported EPA's clarification to the milestone definition and further urged EPA to encourage states to eliminate old motor vehicle emission budgets when submitting new SIPs or SIP revisions with new budgets. Commenters believed that eliminating old budgets would alleviate some confusion over which budgets and which milestones apply when more than one SIP is in place for the same pollutant.

EPA does not agree with this comment. SIPs are legal documents which establish air quality control strategies and measures required for attaining and maintaining the standard. SIPs are developed for more than one Clean Air Act purpose, and each SIP is developed with different planning assumptions and could, thus, generate a different budget as well as potentially address different years. These SIPs and their associated budgets each play a role in an area's attainment strategy and cannot be eliminated simply for convenience in the conformity process. However, there may be some cases where budgets were developed for a Clean Air Act purpose for a year that is no longer applicable for future conformity determinations. Previously established SIPs can only be revised after satisfying applicable Clean Air Act requirements through the SIP process.

EPA believes that there are already mechanisms for clarifying which SIP budgets apply for a given conformity determination. Section 93.118(b) of the conformity rule clarifies which budgets are to be used and under what conditions. In addition, areas should use the interagency consultation process to ensure that § 93.118 is being met and to determine which SIP budgets are applicable for conformity determinations where multiple SIPs are established. For these reasons, EPA believes that no further clarifications or changes to the regulations are necessary.

Donut Areas and Isolated Rural Nonattainment and Maintenance Areas

In this final rule, ''donut areas'' are defined as geographic areas outside a metropolitan planning area boundary as designated under 23 U.S.C. 134 and 49 U.S.C. 5303, but inside the boundary of a designated nonattainment/maintenance area that contains any part of a metropolitan area(s). ''Isolated rural nonattainment and maintenance areas'' are defined as any nonattainment or maintenance area that does not contain or is not part of any metropolitan planning area as designated under 23 U.S.C. 134 and 49 U.S.C. 5303. Isolated rural areas do not have metropolitan transportation plans or TIPs required under 23 U.S.C. 134 and 49 U.S.C. 5303 and 5304 and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. EPA notes, however, that some isolated rural areas may also include projects in the statewide transportation plan. Whatever the case, projects in isolated rural areas that are included in both the statewide plan and statewide TIP would be included in regional emissions analyses for the area consistent with § 93.109(l)(2)(i) of the final rule (formerly § 93.109(g)(2)(i)). Emissions analyses for these areas would also include any existing or planned regionally significant non-federal projects in the nonattainment or maintenance area.

EPA is finalizing these definitions to clarify how areas that are designated nonattainment or maintenance, but that are not within the planning boundary of any MPO's jurisdiction, should be considered for conformity purposes. In general, commenters agreed with these definitions. Two commenters, however, raised concerns about the proposed definition of ''donut areas.'' These commenters believed that the phrase ''that is dominated by a metropolitan area(s)'' that was included in the June 30, 2003 proposal to this final rule was confusing and ambiguous. For example, one commenter stated that this phrase introduces uncertainty about how rural areas that are in a separate nonattainment area, but adjacent to an MPO in a different nonattainment or maintenance area for the same pollutant, would be treated. The commenter claimed that the phrase ''is dominated by'' raises an unnecessary question about the status of such rural areas, and to address this issue, EPA should revise its definition to more closely follow standard practice.

After consideration of these comments, EPA agrees that the proposed definition for donut areas did not accurately reflect our intentions for how these areas should be defined. Therefore, in this final rule we have replaced the phrase ''is dominated by'' with the phrase ''contains any part of'' to clarify our intentions. Historically, EPA has always regarded donut areas as rural areas that are located in a nonattainment or maintenance area that also contains all or part of a metropolitan area. In contrast, isolated rural areas are located in nonattainment or maintenance areas that do not contain any part of a metropolitan area. We believe this simple change to the final rule definition better reflects how donut areas have been defined, in practice, and will ensure that rural areas are appropriately classified under the conformity regulations. EPA believes that a reproposal is not necessary to incorporate this minor change in today's final rule, as this clarification is consistent with EPA's original intentions and stakeholder's understanding of the proposed regulatory definitions.

B. Areas With Insignificant Motor Vehicle Emissions

EPA is finalizing two rule revisions to incorporate our existing insignificance policy in the conformity rule. First, we are adding a new provision, § 93.109(k), which applies to nonattainment and maintenance areas where EPA finds that the SIP's motor vehicle emissions for a pollutant or precursor for a given standard are an insignificant contributor to an area's regional air quality problem. This provision waives the regional emissions analysis requirements in §§ 93.118 and 93.119 for an insignificant pollutant or precursor in these areas upon the effective date of EPA's adequacy finding or approval of such a SIP. In addition, this provision waives the hot-spot requirements in §§ 93.116 and 93.123 in CO and PM_{10} areas if EPA also determines that the SIP demonstrates that potential localized hot-spot emissions are not a concern. Section 93.109(k) also establishes the minimum criteria that are necessary to demonstrate that motor vehicle emissions are insignificant, as described below.

Second, EPA is adding a new § 93.121(c) to the rule to address regionally significant non-federal projects in areas where EPA has found a pollutant or precursor to be regionally insignificant. The new § 93.121(c) allows regionally significant non-federal projects to be approved without being included in a regional emissions analysis for a pollutant or precursor that EPA has found insignificant, since such analyses will no longer be conducted. Sections 93.121(a) and (b) require that the emissions impacts of regionally significant non-federal projects be considered prior to project approval. However, a regional analysis is not required for a pollutant or precursor for a given standard that EPA has found insignificant. Consistent with the new § 93.109(k) for federal projects, the new § 93.121(c) provision allows a non-federal project to be approved, without a regional emissions analysis otherwise required per §§ 93.118 and/or 93.119, for a regionally insignificant pollutant or precursor.

Under this final rule and the existing policy, areas with insignificant regional motor vehicle emissions for a pollutant or precursor are still required to make a conformity determination that satisfies other relevant requirements including: timely implementation of TCMs in an approved SIP, interagency and public consultation, hot-spot requirements including the use of latest planning assumptions and emissions models in CO and PM_{10} areas (if EPA has not made a finding that such emissions are also not a concern), and compliance with SIP control measures in PM_{10} and $PM_{2.5}$ areas. Areas are also required to satisfy the regional emissions analysis requirements in §§ 93.118 and/or 93.119 for pollutants or precursors for which EPA has not made a finding of insignificance. For non-federal regionally significant projects, the requirements in either § 93.121(a) or (b) apply for any other pollutants or precursors for which the area is designated nonattainment or maintenance that are considered significant (*i.e.*, those pollutants or precursors that EPA has not determined to be insignificant at the regional level).

Rationale and Response to Comments

As described in the preamble to the November 5, 2003 proposal, EPA developed the insignificance policy to provide flexibility for areas where motor vehicle emissions had little to no impact on an area's air quality problem. EPA believes that requiring these areas to perform a regional emissions analysis is not necessary to meet Clean Air Act section 176(c) requirements that transportation actions not worsen air quality, since the overall contribution of motor vehicle emissions in these areas is small and thus any significant change in such emissions over time would be unlikely. To date, approximately a dozen areas have taken advantage of the insignificance policy, consisting mainly of PM_{10} areas with air quality problems caused primarily by stationary or area sources. This current universe of areas has not changed significantly since 1993, and we do not anticipate the number of areas that could demonstrate insignificance of regional motor vehicle emissions to substantially increase in the future. Therefore, the final rule waives the regional emissions analysis requirement in these areas without compromising air quality, since state and local resources could then be directed toward reducing emissions from those sources that do contribute the most to an area's air quality problem.

All who commented on insignificance supported incorporating our insignificance policy into the conformity rule. Commenters thought including the policy would help a limited number of areas, and one commenter specifically stated it would reduce burden without endangering air quality. One commenter requested that requirements for federal and non-federal projects be consistent in areas where EPA has found a pollutant or precursor to be insignificant. These requirements are in fact consistent under the final rule as explained above, because no regional emissions analysis is required for either type of project to be approved in these areas.

A few commenters suggested that the insignificance provisions should be expanded to apply with respect to the $PM_{2.5}$ standard. We want to clarify that they in fact do apply for the $PM_{2.5}$ standard. These insignificance provisions could apply to any standard for which conformity is determined, including $PM_{2.5}$.

Furthermore, the new §§ 93.109(k) and 93.121(c) are consistent with the provisions of the rule in §§ 93.102 and 93.119 that address insignificance of pollutants before and after a SIP is submitted. See Section IX. for final rule amendments that address when re-entrained road dust emissions are considered significant for $PM_{2.5}$ analyses.

A few commenters suggested EPA include additional elements in the conformity rule. One commenter, for example, asked that EPA provide a definition of insignificance, and guidance on how such a determination would be made. However, EPA believes that the final rule is sufficient to implement the insignificance provisions in that it incorporates our existing guidance from the proposal to the 1997 rule (July 9, 1996, 61 FR 36118) into § 93.109(k). Rather than a ''one-size-fits-all'' definition, EPA's existing policy as articulated in this and previous conformity rulemakings and the new § 93.109(k) gives EPA and the states the ability to examine whether motor vehicles are a significant contributor to regional and hot-spot air quality on a case-by-case basis, while still providing a framework for EPA's action. Another commenter suggested that the criteria for determining insignificance be expanded to include an area's impact on downwind areas. EPA does not believe a rule change is necessary to accommodate the concern of this commenter and thus is not changing the final rule in response to this comment. Again, EPA will look at SIPs that claim insignificance on a case-by-case basis consistent with the guidance provided in § 93.109(k), including their effects on downwind areas.

A third commenter expressed concern that motor vehicle emissions could go from insignificant to significant simply because a reduction of emissions from other source sectors results in motor vehicle emissions comprising a greater percentage of the area's total inventory. EPA recognizes that this may occur. Initial inventories and strategies to attain or maintain air quality standards may change over time. Any changes to the significance of motor vehicle emissions must be discussed through interagency consultation in SIP development.

This example also illustrates the reason EPA believes it is important to have flexibility in implementing this provision. Although the commenter specifically mentions 10% as the threshold for finding motor vehicle emissions insignificant, EPA clarifies that this figure is a general guideline only. Depending on the circumstances, we may find that motor vehicle emissions that make up less than 10% of an area's total inventory are still significant. Conversely, we may also find that motor vehicle emissions in excess of 10% are still insignificant, under certain circumstances relating to the overall composition of the air quality situation. In general, the percentage of motor vehicle emissions in the area's total inventory is an important criterion for determining whether motor vehicles are a significant or insignificant contributor to an area's air quality problem, yet there are other criteria that EPA will examine when

making this finding, as described in the regulatory text for § 93.109(k).

Another comment we received on this section was with respect to hot-spot analyses. The commenter suggested that if motor vehicles are found to be an insignificant contributor to regional PM_{10}, then hot-spot analyses should no longer be required in all cases. EPA disagrees with this comment, because a project could still cause a PM_{10} hot-spot even when motor vehicle emissions of PM_{10} are not regionally significant. For example, the projects listed in § 93.127 of the conformity rule are exempt from regional emissions analysis because it is recognized that these projects are unlikely to affect emissions on a regional scale, but the local effects of these projects with respect to CO or PM_{10} concentrations must still be considered to determine if a hot-spot analysis is required.

Finally, we received several comments that insignificance should be addressed during the SIP development process with full opportunity for interagency consultation. EPA agrees with these commenters: as we said in the preamble to the November 5, 2003 proposal, it is appropriate that the claim of insignificance be reviewed via the interagency consultation process during the development of the SIP. If it is determined that regional and/or hot-spot motor vehicle emissions are insignificant, such a finding should be clearly stated and well supported in a SIP that is subsequently submitted to EPA for adequacy review and/or approval. We anticipate that interagency consultation regarding insignificance will occur as a result of the requirement for consultation on the development of the SIP in § 93.105(b) of the conformity rule. Further, the public will have appropriate opportunities to comment on proposed findings of insignificance in the process of both state adoption, EPA SIP approval and adequacy finding of submitted SIPs.

C. Limited Maintenance Plans

EPA is finalizing three rule revisions that would make the conformity rule consistent with EPA's existing limited maintenance plan policies for the 1-hour ozone, CO, and PM_{10} standards. Today's rule revisions also allow for any future limited maintenance plan policies for other standards to be considered in the conformity process. In general, a limited maintenance plan policy allows a nonattainment area with air quality that is significantly below a standard to request redesignation through a more streamlined maintenance plan. EPA received no comments on its proposed conformity revisions for limited maintenance plan areas.

First, EPA is adding a basic definition for ''limited maintenance plan'' to § 93.101 of the conformity rule. Second, we are including a new paragraph § 93.109(j) that states that a regional emissions analysis is not required to satisfy §§ 93.118 and/or 93.119 for pollutants in areas that have an adequate or approved limited maintenance plan for a given pollutant and standard. However, a conformity determination that meets other applicable criteria, including the hot-spot requirements for projects in CO and PM_{10} nonattainment and maintenance areas, interagency and public consultation, and timely implementation of TCMs in an approved SIP, is still required in these areas. A regional analysis also is required for any other pollutants or standards that otherwise apply but which are not the subject of a limited maintenance plan. The new § 93.109(j) requires a limited maintenance plan recognized under the conformity rule to have demonstrated that it would be unreasonable to expect that an area would experience enough motor vehicle emissions growth to cause a violation. The interagency consultation process should be used to discuss the development of a limited maintenance plan SIP (40 CFR 93.105(b)).

Third, EPA is adding a new provision, § 93.121(c), to clarify when funding and approval for new regionally significant non-federal projects is granted in areas with limited maintenance plans. Consistent with the new § 93.109(j) for federal projects in areas with limited maintenance plans, this provision would not require a regional emissions analysis per §§ 93.118 and/or 93.119 to be satisfied for regionally significant non-federal projects for the pollutant and standard that is addressed by the limited maintenance plan. However, the requirements in either § 93.121(a) or (b) are required to be satisfied for any remaining pollutants or standards that apply in such an area that are not addressed by the limited maintenance plan.

Based on the criteria for approving limited maintenance plans, EPA believes that violations of a standard for a pollutant due to unexpected regional growth would be highly unlikely in limited maintenance plan areas, although hot-spot violations could still occur. Furthermore, EPA considers it a reasonable assumption that motor vehicle emissions in an area that qualifies for a limited maintenance plan could increase to any realistic level during the maintenance period without causing or contributing to a violation of the standard. As a result, the budgets in limited maintenance plans are treated as essentially not constraining for the length of the maintenance period, and EPA believes that the Clean Air Act requirements to not worsen air quality are met presumptively without a regional conformity analysis. While this policy does not exempt an area from the need to determine conformity, it does eliminate the need for the regional emission analysis since EPA would be concluding through our adequacy review or approval of the limited maintenance plan that limits on motor vehicle emissions during the maintenance period are unnecessary, as long as the area maintains the standard.

The revisions to §§ 93.101, 93.109 and 93.121 in this final rule will not have a practical impact on how conformity is demonstrated in areas with applicable limited maintenance plans, as EPA is simply incorporating into the conformity rule our existing policies for these areas. The purpose of these rule revisions is to assist limited maintenance plan areas in their efforts to implement conformity. These revisions would in no way impose additional requirements for limited maintenance plan areas, nor would it eliminate any existing requirements applicable to such areas that could compromise air quality.

For more information on transportation conformity and limited maintenance plans, see the preamble to the July 9, 1996 proposed conformity rule (61 FR 36118) and EPA's existing limited maintenance plan policies, which are available in the docket for this rulemaking as listed in Section I.B.1. For a discussion on EPA's adequacy review of limited maintenance plans, see the preamble to the June 30, 2003 proposal (68 FR 38974).

D. Grace Period for Transportation Modeling and Plan Content Requirements in Certain Ozone and CO Areas

EPA is finalizing three changes to the conformity rule to clarify when more rigorous transportation modeling and plan content requirements apply when circumstances change in certain ozone and CO areas. Today's rule revisions do not make any changes to the existing transportation plan content and modeling requirements.

First, EPA is providing a two-year grace period in § 93.122(c) before the more advanced transportation modeling requirements in § 93.122(b) are required in the following types of nonattainment areas or portions of such areas that are

not already required to meet these provisions:

- Ozone and CO areas that have an urbanized area population over 200,000 and are reclassified to a serious or higher classification (*e.g.,* such a moderate ozone area that is reclassified to serious);
- Serious and above ozone and CO areas in which the urbanized area population increases to over 200,000; and
- Newly designated ozone and CO nonattainment areas that are classified as serious or above in which the urbanized area population is over 200,000.

EPA is clarifying in the final rule that the grace period covers areas or portions of areas that need additional start-up time to meet new requirements, as described further below.

Second, EPA is expanding the types of areas covered by the current rule's grace period for transportation plan content requirements. Under the previous rule, § 93.106(b) provided a two-year grace period before the more specific transportation plan requirements in § 93.106(a) applied in moderate ozone and CO areas that were reclassified to serious and had urbanized populations over 200,000. EPA crafted the rule that way because it believed at the time that only such areas would need additional time to implement the more sophisticated transportation planning requirements. Today's final rule provides that same flexibility to nonattainment areas or portions of areas that are not already required to meet these requirements and are:

- Ozone areas that have an urbanized area population over 200,000 that are reclassified to a serious or higher classification (*e.g.,* such a moderate ozone area that is reclassified to serious),
- Serious and above ozone and CO areas in which the urbanized area population increases to over 200,000; and
- Newly designated ozone and CO nonattainment areas that are classified as serious or above in which the urbanized area population is over 200,000.

EPA is clarifying the final rule so that these types of areas and portions of such areas which will also need time to implement newly applicable planning requirements are explicitly covered by the grace period, as originally intended.

Third, EPA is clarifying in both §§ 93.106(b) and 93.122(c) that the two-year grace periods begins upon either the:

- Effective date of EPA's action that reclassifies an ozone or CO area with an urbanized area population over 200,000, to a serious or higher classification,
- Official notice by the Census Bureau that the urbanized area population is over 200,000, or
- Effective date of EPA's action that initially designates an area as a serious or above ozone or CO nonattainment area.

An example of an official notice by the Census Bureau would be an announcement in the **Federal Register** that the urbanized population in a metropolitan area has increased to over 200,000.

Rationale and Response to Comments

In general, several commenters supported the two-year grace period as proposed, because it will allow additional time to meet new requirements when applicable. EPA is promulgating these rule revisions to provide flexibility as originally intended. For the reasons stated in the November 5, 2003 proposal (68 FR 62717–8), EPA believes the final rule achieves the appropriate flexibility by providing the grace period to all areas or portions of areas that become newly subject to these requirements, but need start-up time because they have not previously been subject to these requirements. In addition, EPA originally intended §§ 93.106 and 93.122 of the conformity rule to work together to provide start-up time when circumstances change, and providing a two-year grace period for both the plan content and modeling requirements achieves this goal.

EPA is clarifying that the grace period will apply in portions of nonattainment areas, rather than entire areas, that are newly affected and are then required to meet the more rigorous requirements. For example, if a serious 8-hour nonattainment area is designated and includes additional counties to those within the previous serious 1-hour nonattainment area, the grace period would only apply to those additional counties.

In addition, the final rule clarifies how the grace period applies in newly designated 8-hour ozone nonattainment areas, or portions of such areas, that are initially classified as serious or above with an urbanized area population over 200,000, and that have not previously been subject to §§ 93.106(a) and 93.122(b) requirements. EPA believes that it has good cause to finalize a grace period for these newly designated areas, even though the proposal did not specifically propose to provide the grace period to such areas. EPA intended the grace period to apply to these newly designated areas as well, since it is reasonable that such an area, or portion of such an area, would also need additional time to specify its networks and gather additional data to develop a more specific plan and conduct more advanced transportation modeling. Requesting further public comment on this detail is unnecessary, since EPA believes it has already received any comments that would have been submitted on such a minor clarification. Consistent with the intention and spirit of the proposal, EPA has clarified the final regulatory language to provide the grace period in these areas.

One commenter believed that allowing a two-year grace period for the development of regional transportation plans is not reasonable for areas that were already subject to this requirement because they have previously been designated serious or above. An example of this case would be an 8-hour ozone area classified as moderate that was previously classified as serious under the 1-hour ozone standard. The commenter argued that Clean Air Act section 176(c)(6) requires that these areas continue to be subject to the requirements that applied under the ''preexisting'' air quality standard.

EPA agrees with the commenter that areas that were previously subject to more rigorous transportation plan content and modeling requirements should continue to meet them. EPA did not intend to change this aspect of the existing rule with the proposal. Sections 93.106(c) and 93.122(d) (formerly § 93.122(c)) already require that if it had been the previous practice of MPOs to meet these requirements, they must continue to do so. In response, EPA has revised the final rule language to clarify that the grace period does not apply to those areas, or portions of such areas, that are already required to meet these requirements for an existing NAAQS.

Another commenter supported EPA's proposal, but noted that some transportation legislative proposals may change the transportation plan and TIP update intervals. This commenter suggested that EPA synchronize the grace period with the plan and TIP update periods to reduce the overall workload for planning agencies.

EPA recognizes that Congress is currently considering various proposals for surface transportation reauthorization, which may amend transportation planning and/or transportation conformity provisions. However, EPA cannot promulgate regulations now against possible future statutory changes. We must promulgate regulations in light of the current law.

If changes to the transportation planning and conformity processes are passed into law, and those changes necessitate a regulatory change, EPA will propose and promulgate appropriate amendments to the rule at that time.

In a similar light, a few other commenters stated that they opposed EPA's proposal because they believed that the grace period should be aligned with the transportation plan 3-year update cycle. They believed that such a grace period would be more adequate.

EPA did not propose to change the length of the grace period, which was originally finalized as part of the November 24, 1993 conformity rule (58 FR 62188). EPA continues to believe that two years is an adequate time to meet applicable requirements. EPA must balance the benefits achieved by meeting the plan and modeling requirements, with the time needed to specify networks and perform the other data and collection activities necessary to develop network models and specific plans. See the preamble in the proposal for that rulemaking (January 11, 1993, 58 FR 3776) for a discussion on the length of the two-year grace period. EPA continues to believe that a two-year period is an appropriate time span to accommodate these dual goals.

EPA also intends to provide a full two-year grace period in all cases. The commenters' suggestion would result in a shorter grace period in cases where an area is covered by the new regulation in the middle of the plan update cycle. For example, suppose an area updates its plan in 2009, and receives official notice in 2011 from the Census Bureau that its population has increased above 200,000, based on the 2010 census. Under commenters' suggestion that the grace period correspond to the plan update cycle, this area would have only one year to implement the transportation plan content and modeling requirements because its plan update and conformity determination, required every three years, would be due in 2012. EPA does not believe this would provide sufficient time for such an area to implement the plan content and modeling requirements.

In cases of areas increasing in population, several commenters believed that the grace period should begin when DOT notifies an area of the change in population, rather than upon the Census Bureau's official notification in the **Federal Register**. They believed that such a change would allow for a more stable planning process and a more reliable start to the grace period.

EPA disagrees with this approach for the following reasons. First, DOT does not issue formal notifications for all urbanized area definitions and changes. This is a Census Bureau function, and only the Census Bureau issues these notices. Although DOT issues a formal notice on the designation of transportation management areas (TMAs), this notification does not necessarily mean that the transportation plan content and modeling requirements in the conformity rule apply. Although most TMAs correspond to urbanized areas over 200,000 in population, DOT may also designate TMAs for certain areas under 200,000 population, at the request of the Governor of a State. As described above, the current rule is based on urbanized area population, rather than TMA status. Therefore, changing the plan and modeling requirements to align with TMA designations may unintentionally apply these requirements to additional areas. Therefore, EPA is finalizing the rule as proposed, utilizing the Census Bureau's notification as the starting date for the grace period.

Finally, one commenter who also supported the proposal requested further information regarding the selection of 200,000 as the threshold population. The 200,000 population threshold was finalized as part of the August 15, 1997 conformity rule (62 FR 43780). The preamble in the proposal for that rulemaking (July 9, 1996, 61 FR 36122) discussed EPA's rationale to limiting these requirements to areas with urbanized area populations over 200,000. In general, EPA chose the 200,000 population level because it is also the population level used to delineate transportation management areas (TMAs), and because this limitation would ensure that smaller urban or rural areas would not be subject to more rigorous network modeling procedures and methods. EPA continues to believe that the 200,000 level in urbanized areas is appropriate for the plan content and modeling requirements. EPA did not propose any changes to the 200,000 urbanized population level in this rulemaking, and this final rule does not amend this threshold established in the 1997 rulemaking.

E. Minor Clarification to the List of PM_{10} Precursors

Today's final rule clarifies the list of PM_{10} precursors in §§ 93.102(b)(2)(iii) and 93.119(f)(5) of the conformity rule. Under the revised § 93.102(b)(2)(iii), only VOC and NO_X are identified as PM_{10} precursors; *i.e.*, PM_{10} is deleted from the list of PM_{10} precursors in this paragraph. We are finalizing this clarification because § 93.102(b)(1) already requires that direct PM_{10} emissions be addressed in conformity analyses in PM_{10} nonattainment and maintenance areas. Therefore, inclusion of direct PM_{10} as a PM_{10} precursor in § 93.102(b)(2)(iii) is duplicative.

The revisions to § 93.119(f)(5) provide consistency with other pollutants and precursors discussed in this paragraph. Neither of these rule changes will affect conformity determinations in PM_{10} nonattainment and maintenance areas.

EPA received two comments on this clarification to the rule. Both commenters supported the change because it eliminates a source of confusion in the rule's references to PM_{10} and clarifies the requirements of the rule. One of these commenters requested that EPA further clarify a number of additional terms. EPA does not agree that further changes to the rule are required, since these terms are not used in the proposal for this final rule. Please see a more detailed response in the response-to-comments document for this rulemaking in our docket.

F. Clarification of Requirements for Non-Federal Projects in Isolated Rural Areas

EPA is finalizing a minor clarification to § 93.121(b)(1) of the conformity rule that addresses the conformity requirements for non-federal projects in isolated rural nonattainment and maintenance areas. Specifically, the final rule requires a regionally significant non-federal project to be included in the regional emissions analysis of the most recent conformity determination ''that reflects'' the portion of the statewide transportation plan and statewide transportation improvement program (STIP) which includes projects planned for the isolated rural nonattainment or maintenance area before the projects can be approved.

Today's revision to 93.121(b)(1) is intended to clarify that conformity determinations in isolated rural nonattainment and maintenance areas should not be ''for'' the statewide transportation plan or STIP, as written in the previous rule. In the proposal for the original 1993 conformity rule, we explained that ''STIPs are not TIPs as the latter term is meant in Clean Air Act section 176(c), and that conformity therefore does not apply to [STIPs] directly'' (January 11, 1993, 58 FR 62206). However, isolated rural areas do not develop metropolitan transportation plans and TIPs per DOT's planning regulations. Instead, conformity determinations in isolated rural nonattainment and maintenance areas should include those existing and planned projects that are within the area and that are reflected in the statewide

transportation plan and STIP, as well as any other regionally significant projects. This rule change simply clarifies the conformity requirements for isolated rural nonattainment and maintenance areas and should not have a practical impact on how conformity is demonstrated in these areas.

EPA received one comment on this clarification to the rule. The commenter stated that as written the rule would allow regionally significant non-federal projects to be approved even if the most recent conformity determination for a plan and TIP was not approved. The commenter also indicated that EPA must change the rule to require that such approvals only occur when non-federal projects are included in a conformity determination for a conforming plan and TIP.

EPA agrees that regionally significant non-federal projects in isolated rural areas can only be approved if they have been included in a regional emissions analysis supporting the most recent conformity determination for the nonattainment or maintenance area or if they have been included in a regional emissions analysis showing that the area would continue to conform consistent with the requirements of §§ 93.118 and/or 93.119 for projects not from a conforming transportation plan and TIP. We agree that the term ''most recent conformity determination'' refers to the most recent conformity determination that has been made by U.S. DOT. However, we do not agree that the rule needs to be revised to address the commenter's concern that a regionally significant non-federal project could be approved even if the most recent conformity determination has not been approved. EPA promulgated this part of the regulatory text for isolated rural areas in 1997, and EPA did not propose a change through this rulemaking. EPA understands that in practice, areas have always interpreted this provision to refer to approved conformity determinations. Therefore, we believe that the regulated community understands that ''most recent conformity determination'' applies to the most recent approved determination since we are not aware that language in the rule has resulted in any issues or problems.

The commenter also asserted that non-federal projects can only be approved if they are included in a conformity determination for a conforming TIP and plan. We disagree with the commenter's assertion as it pertains to the approval of regionally significant non-federal projects in isolated rural areas. Isolated rural areas are not required to prepare TIPs and plans. Only metropolitan areas are required to prepare these documents. Therefore, regionally significant non-federal projects in isolated rural projects may be approved as long as they meet the requirements of § 93.121(b)(1) or (2), which are described above. That is, although emissions from the project would be included in emissions analyses, the projects themselves would not require conformity determinations.

G. Use of Adequate and Approved Budgets in Conformity

As described in the June 30, 2003 and November 5, 2003 proposals to this final rule, EPA proposed to clarify in § 93.109 for each criteria pollutant and standard that the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after any one of the following:

- The effective date of EPA's finding that a motor vehicle emissions budget in a submitted SIP is adequate,
- The publication date of EPA's approval of such a budget in the **Federal Register,** or
- The effective date of EPA's approval of such a budget in the **Federal Register,** if the approval is completed through direct final rulemaking.

Under this final rule change, the budget would be used in any conformity determination conducted after the first time one of these three EPA actions occurs. See Section XV. for further information.

H. Budget Test Requirements for the Attainment Year

In this final rule, EPA is clarifying how § 93.118(b) and (d) should be implemented when a budget is established for a year prior to the attainment year (*e.g.,* a reasonable further progress budget). Specifically, we are amending § 93.118(b) so that once an area has any control strategy SIP budget available for conformity purposes, conformity must be demonstrated using the ''budget test'' for the attainment year if the attainment year is within the time frame of the transportation plan. EPA believes that it is always appropriate to conduct a budget test for the attainment year if it is within the time frame of the transportation plan and an applicable control strategy budget is established, as explained in the June 30, 2003 proposal. Areas should use the interagency consultation process to determine the appropriate years for which the budget test must be performed. EPA received no comments on this proposed revision to the conformity rule.

I. Budget Test Requirements Once a Maintenance Plan Is Submitted

EPA is also finalizing two minor changes to § 93.118(b)(2) to clarify which budgets apply when an area has both control strategy SIP and maintenance plan budgets. First, EPA is clarifying § 93.118(b)(2)(iii) so that when a maintenance plan has been submitted, the budget test is also completed for a submitted adequate control strategy SIP budget that is established for any year within the time frame of the transportation plan. The previous § 93.118(b)(2)(iii) explicitly required areas with submitted maintenance plans to show consistency only to approved control strategy SIPs, but not adequate control strategy SIPs. Today's action will ensure that new transportation plans and TIPs conform to all adequate and approved budgets that are established for years within the time frame of the transportation plan.

Second, we are adding § 93.118(b)(2)(iv) to clarify that the budget(s) established for the most recent prior year must be used for any analysis years that are selected before the last year of the maintenance plan to meet the requirements of § 93.118(d)(2). The previous conformity rule did not explicitly cover the situation where an analysis year is selected before the last year of the maintenance plan. The final rule provides consistency between the budget test requirements for control strategy SIPs and maintenance plans, since today's § 93.118(b)(2) language for maintenance plans mirrors language that already exists in § 93.118(b)(1) for control strategy SIPs. If an area analyzes a year for which no applicable budgets exist (*e.g.,* an intermediate year between an area's attainment year and the first maintenance budget year), the area should always use the most recent prior adequate or approved budget to demonstrate conformity. This rationale also applies in areas that are submitting their second required 10-year maintenance plan.

EPA received several comments requesting further clarification of our proposed revisions to § 93.118(b)(2). First, one commenter believed that the addition of § 93.118(b)(2)(iv) that requires conformity to prior budgets preempted the requirements for a qualitative finding under § 93.118(b)(2)(i). This commenter asked that the preamble explain under what circumstances a qualitative finding would be appropriate.

Section 93.118(b)(2)(i) states that when a maintenance plan is submitted that does not establish budgets for any years other than the last year of the

maintenance plan, a qualitative finding must be made to ensure that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. In our July 9, 1996 proposal, we stated our conclusion that a ''qualitative finding is necessary if the budget only addresses the last year of the maintenance plan, because the budget test alone is not sufficient to determine, as required by the Clean Air Act, that the transportation action will not cause a new violation. The emissions impacts in the initial ten years of the maintenance plan must be considered in some manner in order to determine conformity.''

EPA still believes that a qualitative finding is necessary in all cases where a maintenance plan establishes budgets only for the last year of the 10-year maintenance period. However, we also believe that a regional emissions analysis and budget test using a previously established budget for a year prior to the last year of a maintenance plan, pursuant to § 93.118(b)(2)(iv), may fulfill the requirement for a qualitative finding in certain cases where the analysis is done for a year early in the term of the maintenance plan. Areas should use the interagency consultation process to determine the specific basis and necessary level of analysis to meet the qualitative finding requirement under § 93.118(b)(2)(i) as described in the June 1996 rulemaking.

Another commenter stated that the proposed revisions to § 93.118(b)(2) do not clearly reflect their understanding that a budget established for a year beyond the time frame of a SIP (*i.e.,* an ''outyear'' budget) may be greater than the budgets established for a reasonable further progress, attainment or maintenance year. This commenter appears to have misinterpreted § 93.118(b)(2)(iii) and (iv), as EPA did not intend for these provisions to mean that budgets established for any years within the time frame of the transportation plan (*e.g.,* outyear budgets) must be less than or equal to a control strategy or maintenance plan budget. EPA intended for the phrase ''emissions * * * must be less than or equal'' to refer to the emissions projected from planned and existing transportation activities in a specific analysis year for the conformity analysis that would be compared to an applicable control strategy or maintenance plan budget. EPA agrees that budgets apply only for the year they are established and for any future analysis years up until the next future budget year. Areas may submit larger budgets for outyears so long as they demonstrate that the SIP continues to provide for attainment or maintenance of the relevant air quality standard in those years.

Finally, one commenter requested that EPA clarify the regional emissions analysis requirements in § 93.118(b) and (d) so that conformity to the applicable motor vehicle emissions budgets will continue to be affirmatively demonstrated during each of the years between budget years and not just for years in which the budget test is required. The commenter suggested that if regional emissions analyses are conducted for a budget year and a subsequent year during the time frame of the transportation plan, and both analyses are consistent with the SIP, then emissions in intervening years can be assumed to conform. However, if such analyses are not conducted and shown to conform in this manner (*e.g.,* when the first analysis year is chosen for a year some time after the first applicable budget), the commenter believed a more targeted analysis is required to ensure conformity in intervening years. By not addressing this alleged deficiency in the rule, the commenter believed that EPA has failed to include the clarification in § 93.118(b) and (d) most needed to serve the purposes of the Clean Air Act.

EPA disagrees with this commenter and believes that the current rule's budget test and regional emissions analysis requirements in § 93.118(b) and (d) are adequate for ensuring that transportation plans, programs and projects meet the conformity requirements of the Clean Air Act. Clean Air Act section 176(c) specifically requires emissions from transportation activities to be consistent with the motor vehicle emissions limits established in the SIP. However, the Clean Air Act is ambiguous about the specific time frame or years in which emissions tests or analyses must be conducted. In the 1993 conformity rule (58 FR 62188), EPA concluded as a legal matter that a demonstration of conformity for specific budget test years reasonably spaced over the time frame of the transportation plan is sufficient for meeting the Clean Air Act requirements and ensuring that emissions from transportation activities do not cause violations, worsen existing violations or delay timely attainment of the air quality standards.

Furthermore, conducting conformity determinations and regional emissions analyses in accordance with the current rule's requirements demands a significant amount of time and state and local resources. EPA believes it would be impractical and overly burdensome to require MPOs and state DOTs to conduct a budget test and regional emissions analysis for additional years within the time frame of a 20-year transportation plan than are already required. Based on EPA's interpretation of the Clean Air Act since 1993, we believe that the current rule's budget test and emissions analysis year requirements are consistent with the statute, reasonable to implement, and protective of public health. Moreover, EPA did not propose to alter this interpretation and thus, has not re-opened this aspect of the conformity rule in this rulemaking.

J. Exempt Projects

Finally, we are making a minor revision to the list of exempt projects in § 93.126 of the conformity rule. On December 21, 1999, DOT published a rule revision to its right-of-way regulation (64 FR 71284) that changed the citation for emergency or hardship advance land acquisitions (revised citation: 23 CFR 710.503) — activities that are currently exempt from the conformity process. As a result, we are revising § 93.126 to make the conformity rule fully consistent with DOT's December 1999 rulemaking. This proposed revision in no way expands or reduces the types of land acquisitions that are exempt from transportation conformity; it merely updates the conformity rule's reference to be consistent with DOT's regulations.

Commenters supported EPA's proposal to make the conformity regulations consistent with DOT's right-of-way regulations. However, one commenter asked EPA to broaden its revisions to the conformity rule's list of exempt projects. This commenter believed that the current list of exempt projects does not fully reflect all the types of projects that should be exempt from conformity, given the progress over the last decade in understanding the real-world air quality impacts of different types of transportation projects.

EPA did not propose amendments or clarifications to the list of exempt projects in §§ 93.126, 93.127 and 93.128, and therefore, cannot address the changes this commenter has suggested. Areas should use the interagency consultation process, including consultation with EPA, FHWA and FTA, to determine which projects in the area's transportation plan and TIP should be considered exempt under §§ 93.126, 93.127 and 93.128 of the rule.

XXIV. Comments Not Related to Rulemaking

Several commenters offered suggestions or raised concerns about aspects of the transportation conformity program that are not germane to this specific rulemaking. These aspects included the process for revising outyear SIP budgets; implementation of EPA and DOT's April 9, 2000 Memorandum of Understanding; reauthorization of the Surface Transportation Act, currently entitled Transportation Equity Act for the 21*st* Century (or TEA–21), and other topics. These comments do not affect whether EPA should proceed with this final action. Because these comments are not germane to this action, EPA has not responded substantively to them.

In addition, two commenters urged EPA to publish the entire conformity regulatory text when we issued today's final rule. These commenters stated that publication of the entire rule would make the regulation easier to understand and implement. In response to this comment, EPA will provide a complete version of the conformity regulations that includes today's final rule on our transportation conformity website listed in Section I.B.2. of this notice. Individuals can also obtain a copy of the conformity regulations that incorporate today's rule amendments from the next codification of the *U.S. Code of Federal Regulations* after this final rule is published in the **Federal Register**. A complete response to comments document is in the docket for this rulemaking. See Section I.B.2. of this final rule for more information regarding the relevant dockets and how to access additional information associated with this final rule.

XXV. How Does Today's Final Rule Affect Conformity SIPs?

Clean Air Act section 176(c)(4)(C) currently requires states to submit revisions to their SIPs to reflect all of the federal criteria and procedures for determining conformity. States can choose to develop conformity SIPs as a memorandum of understanding (MOU), memorandum of agreement (MOA), or state rule. However, a state must have and use its authority to make an MOU or MOA enforceable as a matter of state law, if such mechanisms are used. Section 51.390(b) of the conformity rule specifies that after EPA approves any conformity SIP revision, the federal conformity rule no longer governs conformity determinations (for the sections of the federal conformity rule that are covered by the approved conformity SIP).

EPA would like to clarify when provisions of today's final rule apply in nonattainment and maintenance areas with and without EPA-approved conformity SIPs:

- All provisions relating to the new standards apply immediately in all nonattainment and maintenance areas upon the effective date of today's action because no prior conformity rules (or approved conformity SIPs) address these new standard requirements.
- All amendments that address provisions directly impacted by the March 2, 1999 court decision apply immediately in all nonattainment and maintenance areas upon the effective date of today's action. Although some areas have conformity SIPs that were approved prior to March 1999, provisions included in these SIPs that the court subsequently remanded to EPA for further rulemaking are no longer enforceable by law. As a result, all areas, including those with a previously approved conformity SIPs, have been operating under EPA and DOT's guidance that implements the court decision and will be governed by the relevant court-related provisions of today's action when they become effective.
- In some areas, EPA has already approved conformity SIPs that include other provisions from previous conformity rulemakings that EPA is revising in this final rule. In these areas, the Clean Air Act prohibits today's federal rule amendments that are not a direct result of the March 1999 court decision or specifically related to the new standards (*e.g.*, streamlining the frequency of conformity determinations; revision to the latest planning assumptions requirement) from superceding the previously approved state rules. Therefore, these specific rule amendments will be effective in areas with approved conformity SIPs that include related rule provisions only when the state includes them in a SIP revision and EPA approves that SIP revision. EPA has no authority to disregard this statutory requirement for those portions of today's final rule.
- Areas without any approved conformity SIPs will be able to use immediately all of the conformity amendments that are included in today's final rule.

EPA will provide further guidance on when sections of the conformity rule can be used in the conformity process in areas with approved conformity SIPs to assist states in implementing these provisions. This guidance will be posted on EPA's transportation conformity Web site listed in Section I.B.2. of today's final rule.

One commenter did not agree that areas with approved conformity SIPs should have to revise their SIP before provisions of the final rule become effective. The commenter argued that this requirement penalizes areas with approved conformity SIPs and poses an undue burden on these areas to develop and gain EPA's approval of a SIP revision.

EPA believes that this commenter misunderstood the proposal which stated that amendments that address specific conformity requirements for the new standards can be used by all areas upon the effective date of today's final rule, whether or not an area currently has an approved conformity SIP addressing pre-existing standards. This is possible since specific conformity requirements for the new standards should not be included in any currently approved conformity SIPs.

However, amendments in today's final rule that are for sections of the federal rule that are not specifically related to the new standards and that are not affected by a March 1999 court decision finding certain provisions illegal become effective in states with approved conformity SIPs only when the state includes the amended section in a conformity SIP revision and EPA approves that SIP revision. This is because such provisions of the federal rule that are being changed no longer apply directly in states with approved conformity SIPs covering those provisions. EPA will work with states to approve such revisions as expeditiously as possible through flexible administrative techniques, such as parallel processing or direct final rulemaking. EPA's further guidance, as described above, will assist in conformity SIP revisions for today's final rule.

This same commenter supported a process such as that proposed in the Administration's SAFETEA legislation that would streamline the conformity SIP requirement so that only interagency consultation requirements would need to be included in such SIP revisions. EPA supports this legislation, and if it becomes law, EPA agrees that the conformity SIP requirement will be significantly streamlined without practically affecting the conformity process. However, until such legislation is adopted, EPA is bound by the current Clean Air Act, and § 51.390 of the conformity rule continues to apply for conformity SIP revisions for this final rule.

One commenter requested that EPA coordinate the finalization of the rulemakings that address the new standards and the March 1999 court

decision so that area's will only need to revise their conformity SIPs once. Coordinating the release of the two final rules will assist in using state resources most efficiently and avoid duplication. EPA agrees with this commenter, and recommends that state and local air agencies should address both rulemakings in the same conformity SIP revision, since today's final rule combines the majority of the conformity provisions from the previously separate rulemakings.

XXVI. Statutory and Executive Order Reviews

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.

Under the terms of Executive Order 12866, it has been determined that amendments in this rule that are related to conformity under the new air quality standards are a ''significant regulatory action.'' As such, this action was submitted to OMB for E.O. 12866 review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements for this final rule will be submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* and as ICR 2130.02. The information collection requirements are not enforceable until OMB approves them.

Transportation conformity determinations are required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the SIP. Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant air quality standards. Transportation conformity applies under EPA's conformity regulations at 40 CFR parts 51.390 and 93 to areas that are designated nonattainment and those redesignated to attainment after 1990 (''maintenance areas'' with SIPs developed under Clean Air Act section 175A) for transportation-source criteria pollutants. The Clean Air Act gives EPA the statutory authority to establish the criteria and procedures for determining whether transportation activities conform to the SIP.

Amendments in today's final rule that are related to conformity requirements in existing nonattainment and maintenance areas do not impose any new information collection requirements from EPA that require approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* 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 information collection requirements of EPA's existing transportation conformity rule and any revisions in today's action for existing areas are covered under the DOT information collection request (ICR) entitled, ''Metropolitan and Statewide Transportation Planning,'' with the OMB control number of 2132–0529.

EPA provided two opportunities for public comment on the incremental burden estimates for transportation conformity determinations under the new 8-hour ozone and $PM_{2.5}$ standards. First, the November 5, 2003 proposal contained an initial annual burden estimate for conducting conformity determinations of $6,750 and 275 hours for each metropolitan area designated nonattainment for the first time for the 8-hour ozone and $PM_{2.5}$ standards (*e.g.*, areas that have never been subject to transportation conformity for any standard). EPA refined this burden estimate in the ICR that it released for public comment on January 5, 2004 (69 FR 336). As described in the January 2004 ICR (ICR 2130.01), the estimated annual state and local burden for conformity activities in each metropolitan nonattainment area that is expected to incur additional burden under the new ozone and $PM_{2.5}$ standards is estimated at 325 hours/year at a cost of $16,320/year. Additional federal burden associated with conformity for each of these metropolitan nonattainment areas is approximately 127 hours/year at a cost of $6,400/year. Average state and local burden associated with conformity for each isolated rural nonattainment area that incurs new burden under the new standards is 42 hours/year at a cost of $2,111/year. New federal burden associated with each of these areas is calculated to be 10 hours/year at a cost of $503/year.

EPA received comments on both the initial burden estimates provided in the November 5, 2003 proposal and on the revised estimates in the January 2004 ICR. EPA will respond to all of these comments in the final ICR that will be submitted to OMB for approval (ICR 2130.02).

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. When ICR 2130.02 is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires the Agency to conduct a regulatory flexibility analysis of any significant impact a rule will have on a substantial number of small entities. Small entities include small businesses,

small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act.

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.

EPA has determined that this final rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this rulemaking is to amend the existing federal conformity regulations to cover areas newly designated nonattainment under the recently promulgated 8-hour ozone and $PM_{2.5}$ air quality standards. Clean Air Act section 176(c)(5) requires the applicability of conformity to such areas as a matter of law one year after nonattainment designations. Thus, although this rule explains how conformity should be conducted, it merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year.

This rulemaking also formalizes what the U.S. Court of Appeals for the District of Columbia Circuit has already decided as a legal matter, and that is currently being implemented in practice. Additional rule amendments also addressed in this final rule simply serve to improve the conformity regulation by implementing the rule in a more practicable manner and/or to clarify conformity requirements that already exist. None of these rule amendments impose any additional burdens beyond that already imposed by applicable federal law; thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

Executive Order 13132, Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with state and local officials early in the process of developing the regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with state and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule, that amends a regulation that is required by statute, 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 Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this final rule merely establishes and revises procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations.

In addition, the U.S. Court of Appeals for the District of Columbia Circuit has determined that projects requiring federal approval and funding are affected when a nonattainment or

maintenance area is unable to demonstrate conformity. Specifically, under Clean Air Act section 176(c) those phases (NEPA approval, right-of-way acquisition, final design, or construction) in a federal project's development that have not received federal approval or funding prior to a conformity lapse cannot be granted approval or funding, and thus proceed during a conformity lapse. Furthermore, the court directed EPA to establish new procedures for determining the adequacy of motor vehicle emissions estimates before such estimates can be used in conformity determinations to comply with Clean Air Act requirements. Similarly, other amendments included in this final rule are the result of either the court's order concerning the proper interpretation of the Clean Air Act and other related administrative matters, or have been proposed simply to make the rule more workable and/or to clarify requirements that already exist under the current conformity regulation.

In summary, this final rule is required primarily by the statutory requirements imposed by the Clean Air Act, and the final rule by itself will not have a substantial impact on states. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

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

Executive Order 13175: ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

Today's amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, as the Clean Air Act requires transportation conformity to apply in any area that is designated nonattainment or maintenance by EPA. Specifically, this final rule incorporates into the conformity rule provisions addressing newly designated nonattainment areas subject to conformity requirements under the Act, the court's interpretation of the Act, as well as several other clarifications and improvements, that have no substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this rulemaking.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks 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 a 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.

This final rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this final rule.

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 this final 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 final rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on August 2, 2004.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 30, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. This action may not be challenged later in proceeding to enforce its requirements. (*See* section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Inter governmental relations, Nitrogen Dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: June 14, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is amended as follows:

PART 93—[AMENDED]

■ 1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 93.101 is amended by adding, in alphabetical order, new definitions for ''1-hour ozone NAAQS,'' ''8-hour ozone NAAQS,'' ''Donut areas,'' ''Isolated rural nonattainment and maintenance areas,'' and ''Limited maintenance plan,'' and by revising definitions for ''Control strategy implementation plan revision'' and ''Milestone'' to read as follows:

§ 93.101 Definitions.

* * * * *

1-hour ozone NAAQS means the 1-hour ozone national ambient air quality standard codified at 40 CFR 50.9.

* * * * *

8-hour ozone NAAQS means the 8-hour ozone national ambient air quality standard codified at 40 CFR 50.10.

* * * * *

Control strategy implementation plan revision is the implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (including implementation plan revisions submitted to satisfy CAA sections 172(c), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 187(g), 189(a)(1)(B), 189(b)(1)(A), and 189(d); sections 192(a) and 192(b), for nitrogen dioxide; and any other applicable CAA provision requiring a demonstration of reasonable further progress or attainment).

* * * * *

Donut areas are geographic areas outside a metropolitan planning area boundary, but inside the boundary of a nonattainment or maintenance area that contains any part of a metropolitan area(s). These areas are not isolated rural nonattainment and maintenance areas.

* * * * *

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated under the transportation planning regulations. Isolated rural areas do not have Federally required metropolitan transportation plans or TIPs and do not have projects that are part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. Projects in such areas are instead included in statewide transportation improvement programs. These areas are not donut areas.

* * * * *

Limited maintenance plan is a maintenance plan that EPA has determined meets EPA's limited maintenance plan policy criteria for a given NAAQS and pollutant. To qualify for a limited maintenance plan, for example, an area must have a design value that is significantly below a given NAAQS, and it must be reasonable to expect that a NAAQS violation will not result from any level of future motor vehicle emissions growth.

* * * * *

Milestone has the meaning given in CAA sections 182(g)(1) and 189(c) for serious and above ozone nonattainment areas and PM_{10} nonattainment areas, respectively. For all other nonattainment areas, a milestone consists of an emissions level and the date on which that level is to be achieved as required by the applicable CAA provision for reasonable further progress towards attainment.

* * * * *

■ 3. Section 93.102 is amended by:
■ a. Revising paragraphs (b)(1), (b)(2) introductory text and (b)(2)(iii);
■ b. Redesignating paragraph (b)(3) as paragraph (b)(4);
■ c. Adding a new paragraph (b)(3);
■ d. Revising paragraph (c); and
■ e. Revising paragraph (d).

The revisions and additions read as follows:

§ 93.102 Applicability.

* * * * *

(b) * * *

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$).

(2) The provisions of this subpart also apply with respect to emissions of the following precursor pollutants:

* * * * *

(iii) VOC and/or NO_X in PM_{10} areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to $PM_{2.5}$ nonattainment and maintenance areas with respect to $PM_{2.5}$ from re-entrained road dust if the EPA Regional Administrator or the director of the State air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

* * * * *

(c) *Limitations.* In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must be in place at the time of project approval as described in § 93.114, except as provided by § 93.114(b).

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM_{10}, $PM_{2.5}$ or NO_2 since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this subpart shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

■ 4. Section 93.104 is amended by:
■ a. Revising the first sentence in paragraph (b)(3);
■ b. Revising the first sentence in paragraph (c)(3), and removing paragraph (c)(4);
■ c. Revising paragraph (d); and
■ d. Removing paragraphs (e)(1) and (e)(4) and redesignating paragraphs (e)(2), (e)(3) and (e)(5) as paragraphs (e)(1), (e)(2) and (e)(3), and by revising newly redesignated paragraphs (e)(2) and (e)(3).

The revisions read as follows:

§ 93.104 Frequency of conformity determinations.

* * * * *

(b) * * *

(3) The MPO and DOT must determine the conformity of the transportation plan (including a new regional emissions analysis) no less frequently than every three years. * * *

(c) * * *

(3) The MPO and DOT must determine the conformity of the TIP (including a new regional emissions analysis) no less frequently than every three years. * * *

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if one of the following occurs: a significant change in the project's design concept and scope; three years elapse since the most recent major step to advance the project; or initiation of a supplemental environmental document for air quality purposes. Major steps include NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; and, construction (including Federal approval of plans, specifications and estimates).

(e) * * *

(2) The effective date of EPA approval of a control strategy implementation plan revision or maintenance plan which establishes or revises a motor vehicle emissions budget if that budget has not yet been used in a conformity determination prior to approval; and

(3) The effective date of EPA promulgation of an implementation plan which establishes or revises a motor vehicle emissions budget.

■ 5. Section 93.105(c)(1)(vii) is amended by revising the reference ''§ 93.109(g)(2)(iii)'' to read ''§ 93.109(l)(2)(iii).''

■ 6. Section 93.106 is amended by revising paragraph (b) to read as follows:

§ 93.106 Content of transportation plans.

* * * * *

(b) *Two-year grace period for transportation plan requirements in certain ozone and CO areas.* The requirements of paragraph (a) of this section apply to such areas or portions of such areas that have previously not been required to meet these requirements for any existing NAAQS two years from the following:

(1) The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

* * * * *

■ 7. Section 93.109 is amended by:

■ a. Revising the paragraph (b) introductory text;

■ b. In Table 1 of paragraph (b), revising the entry for ''§ 93.118 or § 93.119'' under ''Transportation Plan:'' and the entry for ''§ 93.118 or § 93.119'' under ''TIP:'', and revising the entry for ''§ 93.117'' under ''Project (From a Conforming Plan and TIP):'' and the entries for ''§ 93.117'' and ''§ 93.118 or § 93.119'' under ''Project (Not From a Conforming Plan and TIP):''

■ c. Revising paragraph (c);

■ d. Redesignating paragraphs (d), (e), (f) and (g) as paragraphs (f), (g), (h) and (l);

■ e. Adding new paragraphs (d), (e), (i), (j) and (k);

■ f. Revising newly redesignated paragraphs (f) introductory text, (f)(2), (f)(3) and (f)(4)(i) and (ii);

■ g. Revising newly redesignated paragraphs (g) introductory text, (g)(2), and (g)(3);

■ h. Revising newly redesignated paragraph (h); and

■ i. Revising newly redesignated paragraph (l)(2) introductory text; in newly redesignated paragraph (l)(2)(ii)(B), revising ''§ 93.119(d)(2)'' to read ''§ 93.119(f)(2)'' and, in newly redesignated paragraph (l)(2)(iii), revising ''paragraph (g)(2)(ii)'' and ''paragraph (g)(2)(ii)(C)'' to read ''paragraph (l)(2)(ii)'' and ''paragraph (l)(2)(ii)(C)'', respectively.

The revisions and additions read as follows:

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(b) Table 1 in this paragraph indicates the criteria and procedures in §§ 93.110 through 93.119 which apply for transportation plans, TIPs, and FHWA/FTA projects. Paragraphs (c) through (i) of this section explain when the budget, interim emissions, and hot-spot tests are required for each pollutant and NAAQS. Paragraph (j) of this section addresses conformity requirements for areas with approved or adequate limited maintenance plans. Paragraph (k) of this section addresses nonattainment and maintenance areas which EPA has determined have insignificant motor vehicle emissions. Paragraph (l) of this section addresses isolated rural nonattainment and maintenance areas. Table 1 follows:

TABLE 1.—CONFORMITY CRITERIA

* * * * * * *	
Transportation Plan:	
* * * * * * *	
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions.
* * * * * * *	
TIP:	
* * * * * * *	
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions.
* * * * * * *	
Project (From a Conforming Plan and TIP):	
* * * * * * *	
§ 93.117	PM_{10} and $PM_{2.5}$ control measures.

TABLE 1.—CONFORMITY CRITERIA—Continued

* * * * * * *	
Project (Not From a Conforming Plan and TIP):	
* * * * * * *	
§ 93.117	PM_{10} and $PM_{2.5}$ control measures.
§ 93.118 and/or § 93.119	Emissions budget and/or Interim emissions.
* * * * * * *	

(c) *1-hour ozone NAAQS nonattainment and maintenance areas.* This paragraph applies when an area is nonattainment or maintenance for the 1-hour ozone NAAQS (*i.e.,* until the effective date of any revocation of the 1-hour ozone NAAQS for an area). In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In all 1-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually moderate and above areas), the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 1-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 1-hour ozone NAAQS.

(3) An ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or Phase I attainment demonstration that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 1-hour ozone NAAQS (usually marginal and below areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 1-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (c)(1) of this section).

(5) Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data for the 1-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 1-hour ozone NAAQS must satisfy one of the following requirements:

(i) The interim emissions tests as required by § 93.119;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 1-hour ozone NAAQS (subject to the timing requirements of paragraph (c)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 1-hour ozone NAAQS.

(d) *8-hour ozone NAAQS nonattainment and maintenance areas without motor vehicle emissions budgets for the 1-hour ozone NAAQS for any portion of the 8-hour nonattainment area.* This paragraph applies to areas that were never designated nonattainment for the 1-hour ozone NAAQS and areas that were designated nonattainment for the 1-hour ozone NAAQS but that never submitted a control strategy SIP or maintenance plan with approved or adequate motor vehicle emissions budgets. This paragraph applies 1 year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to § 93.102(d). In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In ozone nonattainment areas that are required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually moderate and above and certain Clean Air Act, part D, subpart 1 areas), the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan for the 8-hour ozone NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 2002.

(4) Ozone nonattainment areas that have not submitted a maintenance plan and that are not required to submit a control strategy implementation plan revision for the 8-hour ozone NAAQS (usually marginal and certain Clean Air Act, part D, subpart 1 areas) must satisfy one of the following requirements:

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision for the 8-hour ozone NAAQS that contains motor vehicle emissions budget(s) and a reasonable further progress or attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (d)(1) of this section).

(5) Notwithstanding paragraphs (d)(1) and (d)(2) of this section, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(i) The interim emissions tests as required by § 93.119;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of paragraph (d)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

(e) *8-hour ozone NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1-hour ozone NAAQS that cover all or a portion of the 8-hour nonattainment area.* This provision applies 1 year after the effective date of EPA's nonattainment designation for the 8-hour ozone NAAQS for an area, according to § 93.102(d). In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 8-hour ozone nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In such 8-hour ozone nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 8-hour ozone NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) Prior to paragraph (e)(1) of this section applying, the following test(s) must be satisfied, subject to the exception in paragraph (e)(2)(v):

(i) If the 8-hour ozone nonattainment area covers the same geographic area as the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission;

(ii) If the 8-hour ozone nonattainment area covers a smaller geographic area within the 1-hour ozone nonattainment or maintenance area(s), the budget test as required by § 93.118 for either:

(A) The 8-hour nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The 1-hour nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the 8-hour ozone NAAQS in such cases, these emissions reductions must come from within the 8-hour nonattainment area;

(iii) If the 8-hour ozone nonattainment area covers a larger geographic area and encompasses the entire 1-hour ozone nonattainment or maintenance area(s):

(A) The budget test as required by § 93.118 for the portion of the 8-hour ozone nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission; and

(B) The interim emissions tests as required by § 93.119 for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state of a multi-state 1-hour nonattainment or maintenance area;

(iv) If the 8-hour ozone nonattainment area partially covers a 1-hour ozone nonattainment or maintenance area(s):

(A) The budget test as required by § 93.118 for the portion of the 8-hour

ozone nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: the portion of the 8-hour ozone nonattainment area not covered by the approved or adequate budgets in the 1-hour ozone implementation plan, the entire 8-hour ozone nonattainment area, or the entire portion of the 8-hour ozone nonattainment area within an individual state, in the case where separate 1-hour SIP budgets are established for each state in a multi-state 1-hour nonattainment or maintenance area.

(v) Notwithstanding paragraphs (e)(2)(i), (ii), (iii), or (iv) of this section, the interim emissions tests as required by § 93.119, where the budget test using the approved or adequate motor vehicle emissions budgets in the 1-hour ozone applicable implementation plan(s) or implementation plan submission(s) for the relevant area or portion thereof is not the appropriate test and the interim emissions tests are more appropriate to ensure that the transportation plan, TIP, or project not from a conforming plan and TIP will not create new violations, worsen existing violations, or delay timely attainment of the 8-hour ozone standard, as determined through the interagency consultation process required by § 93.105.

(3) Such an 8-hour ozone nonattainment area must satisfy the interim emissions test for NO_X, as required by § 93.119, if the only implementation plan or plan submission that is applicable for the purposes of conformity determinations is a 15% plan or other control strategy SIP that addresses reasonable further progress that does not include a motor vehicle emissions budget for NO_X. The implementation plan for the 8-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan or plan submission contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 2002. Prior to an adequate or approved NO_X motor vehicle emissions budget in the implementation plan submission for the 8-hour ozone NAAQS, the implementation plan for the 1-hour ozone NAAQS will be considered to establish a motor vehicle emissions budget for NO_X if the implementation plan contains an explicit NO_X motor vehicle emissions budget that is intended to act as a ceiling on future NO_X emissions, and the NO_X motor vehicle emissions budget is a net reduction from NO_X emissions levels in 1990.

(4) Notwithstanding paragraphs (e)(1) and (e)(2) of this section, ozone nonattainment areas with three years of clean data for the 8-hour ozone NAAQS that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements for the 8-hour ozone NAAQS must satisfy one of the following requirements:

(i) The budget test and/or interim emissions tests as required by §§ 93.118 and 93.119 and as described in paragraph (e)(2) of this section;

(ii) The budget test as required by § 93.118, using the adequate or approved motor vehicle emissions budgets in the submitted or applicable control strategy implementation plan for the 8-hour ozone NAAQS (subject to the timing requirements of paragraph (e)(1) of this section); or

(iii) The budget test as required by § 93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rulemaking that determines that the area has clean data for the 8-hour ozone NAAQS.

(f) *CO nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in CO nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

* * * * *

(2) In CO nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(3) Except as provided in paragraph (f)(4) of this section, in CO nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(4) * * *

(i) The interim emissions tests required by § 93.119; or

(ii) The State shall submit to EPA an implementation plan revision that contains motor vehicle emissions budget(s) and an attainment demonstration, and the budget test required by § 93.118 must be satisfied using the adequate or approved motor vehicle emissions budget(s) (as described in paragraph (f)(2) of this section).

(g) *PM_{10} nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in PM_{10} nonattainment and maintenance areas conformity determinations must include a demonstration that the hot-spot, budget and/or interim emissions tests are satisfied as described in the following:

(1) * * *

(2) In PM_{10} nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(3) In PM_{10} nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made:

(i) If there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy

implementation plan revision or maintenance plan; or

(ii) If the submitted implementation plan revision is a demonstration of impracticability under CAA section 189(a)(1)(B)(ii) and does not demonstrate attainment.

(h) *NO_2 nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in NO_2 nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In NO_2 nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In NO_2 nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made when there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(i) *$PM_{2.5}$ nonattainment and maintenance areas.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) In $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(2) In $PM_{2.5}$ nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan.

(j) *Areas with limited maintenance plans.* Notwithstanding the other paragraphs of this section, an area is not required to satisfy the regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant and NAAQS, if the area has an adequate or approved limited maintenance plan for such pollutant and NAAQS. A limited maintenance plan would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth for a NAAQS violation to occur. A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section is still required, including the hot-spot requirements for projects in CO and PM_{10} areas.

(k) *Areas with insignificant motor vehicle emissions.* Notwithstanding the other paragraphs in this section, an area is not required to satisfy a regional emissions analysis for § 93.118 and/or § 93.119 for a given pollutant/precursor and NAAQS, if EPA finds through the adequacy or approval process that a SIP demonstrates that regional motor vehicle emissions are an insignificant contributor to the air quality problem for that pollutant/precursor and NAAQS. The SIP would have to demonstrate that it would be unreasonable to expect that such an area would experience enough motor vehicle emissions growth in that pollutant/precursor for a NAAQS violation to occur. Such a finding would be based on a number of factors, including the percentage of motor vehicle emissions in the context of the total SIP inventory, the current state of air quality as determined by monitoring data for that NAAQS, the absence of SIP motor vehicle control measures, and historical trends and future projections of the growth of motor vehicle emissions. A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section is still required, including regional emissions analyses for § 93.118 and/or § 93.119 for other pollutants/precursors and NAAQS that apply. Hot-spot requirements for projects in CO and PM_{10} areas in § 93.116 must also be satisfied, unless EPA determines that the SIP also demonstrates that projects will not create new localized violations and/or increase the severity or number of existing violations of such NAAQS. If EPA subsequently finds that motor vehicle emissions of a given pollutant/precursor are significant, this paragraph would no longer apply for future conformity determinations for that pollutant/precursor and NAAQS.

(l) * * *

(2) Isolated rural nonattainment and maintenance areas are subject to the budget and/or interim emissions tests as described in paragraphs (c) through (k) of this section, with the following modifications:

* * * * *

■ 8. Section 93.110(a) is revised to read as follows:

§ 93.110 Criteria and procedures: Latest planning assumptions.

(a) Except as provided in this paragraph, the conformity determination, with respect to all other applicable criteria in §§ 93.111 through 93.119, must be based upon the most recent planning assumptions in force at the time the conformity analysis begins. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section using the planning assumptions available at the time the conformity analysis begins as determined through the interagency consultation process required in § 93.105(c)(1)(i). The ''time the conformity analysis begins'' for a transportation plan or TIP determination is the point at which the MPO or other designated agency begins to model the impact of the proposed transportation plan or TIP on travel and/or emissions. New data that becomes available after an analysis begins is required to be used in the conformity determination only if a significant delay in the analysis has occurred, as determined through interagency consultation.

* * * * *

■ 9. Section 93.116 is revised to read as follows:

§ 93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO

or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

(b) This paragraph applies for CO nonattainment areas as described in § 93.109(f)(1). Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that during the time frame of the transportation plan (or regional emissions analysis) existing localized CO violations will be eliminated or reduced in severity and number as a result of the project. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

■ 10. Section 93.117 is revised to read as follows:

§ 93.117 Criteria and procedures: Compliance with PM_{10} and $PM_{2.5}$ control measures.

The FHWA/FTA project must comply with any PM_{10} and $PM_{2.5}$ control measures in the applicable implementation plan. This criterion is satisfied if the project-level conformity determination contains a written commitment from the project sponsor to include in the final plans, specifications, and estimates for the project those control measures (for the purpose of limiting PM_{10} and $PM_{2.5}$ emissions from the construction activities and/or normal use and operation associated with the project) that are contained in the applicable implementation plan.

■ 11. Section 93.118 is amended by:

■ a. Revising the reference ''§ 93.109(c) through (g)'' in paragraph (a) to read ''§ 93.109(c) through (l)'';

■ b. Revising paragraphs (b) introductory text and (b)(2)(iii), adding paragraph (b)(2)(iv), and removing the word ''and'' at the end of paragraph (b)(2)(ii);

■ c. Revising paragraphs (e)(1), (e)(2) and (e)(3); and

■ d. Adding new paragraph (f).

The revisions and additions read as follows:

§ 93.118 Criteria and procedures: Motor vehicle emissions budget.

* * * * *

(b) Consistency with the motor vehicle emissions budget(s) must be demonstrated for each year for which the applicable (and/or submitted) implementation plan specifically establishes motor vehicle emissions budget(s), for the attainment year (if it is within the timeframe of the transportation plan), for the last year of the transportation plan's forecast period, and for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than ten years apart, as follows:

* * * * *

(2) * * *

(iii) If an approved and/or submitted control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years; and

(iv) For any analysis years before the last year of the maintenance plan, emissions must be less than or equal to the motor vehicle emissions budget(s) established for the most recent prior year.

* * * * *

(e) * * *

(1) Consistency with the motor vehicle emissions budgets in submitted control strategy implementation plan revisions or maintenance plans must be demonstrated if EPA has declared the motor vehicle emissions budget(s) adequate for transportation conformity purposes, and the adequacy finding is effective. However, motor vehicle emissions budgets in submitted implementation plans do not supersede the motor vehicle emissions budgets in approved implementation plans for the same Clean Air Act requirement and the period of years addressed by the previously approved implementation plan, unless EPA specifies otherwise in its approval of a SIP.

(2) If EPA has not declared an implementation plan submission's motor vehicle emissions budget(s) adequate for transportation conformity purposes, the budget(s) shall not be used to satisfy the requirements of this section. Consistency with the previously established motor vehicle emissions budget(s) must be demonstrated. If there are no previously approved implementation plans or implementation plan submissions with adequate motor vehicle emissions budgets, the interim emissions tests required by § 93.119 must be satisfied.

(3) If EPA declares an implementation plan submission's motor vehicle emissions budget(s) inadequate for transportation conformity purposes after EPA had previously found the budget(s) adequate, and conformity of a transportation plan or TIP has already been determined by DOT using the budget(s), the conformity determination will remain valid. Projects included in that transportation plan or TIP could still satisfy §§ 93.114 and 93.115, which require a currently conforming transportation plan and TIP to be in place at the time of a project's conformity determination and that projects come from a conforming transportation plan and TIP.

* * * * *

(f) *Adequacy review process for implementation plan submissions.* EPA will use the procedure listed in paragraph (f)(1) or (f)(2) of this section to review the adequacy of an implementation plan submission:

(1) When EPA reviews the adequacy of an implementation plan submission prior to EPA's final action on the implementation plan,

(i) EPA will notify the public through EPA's website when EPA receives an implementation plan submission that will be reviewed for adequacy.

(ii) The public will have a minimum of 30 days to comment on the adequacy of the implementation plan submission. If the complete implementation plan is not accessible electronically through the internet and a copy is requested within 15 days of the date of the website notice, the comment period will be extended for 30 days from the date that a copy of the implementation plan is mailed.

(iii) After the public comment period closes, EPA will inform the State in writing whether EPA has found the submission adequate or inadequate for use in transportation conformity, including response to any comments submitted directly and review of comments submitted through the State process, or EPA will include the determination of adequacy or inadequacy in a proposed or final action approving or disapproving the implementation plan under paragraph (f)(2)(iii) of this section.

(iv) EPA will publish a **Federal Register** notice to inform the public of EPA's finding. If EPA finds the submission adequate, the effective date of this finding will be 15 days from the date the notice is published as established in the **Federal Register** notice, unless EPA is taking a final approval action on the SIP as described in paragraph (f)(2)(iii) of this section.

(v) EPA will announce whether the implementation plan submission is

adequate or inadequate for use in transportation conformity on EPA's website. The website will also include EPA's response to comments if any comments were received during the public comment period.

(vi) If after EPA has found a submission adequate, EPA has cause to reconsider this finding, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section unless EPA determines that there is no need for additional public comment given the deficiencies of the implementation plan submission. In all cases where EPA reverses its previous finding to a finding of inadequacy under paragraph (f)(1) of this section, such a finding will become effective immediately upon the date of EPA's letter to the State.

(vii) If after EPA has found a submission inadequate, EPA has cause to reconsider the adequacy of that budget, EPA will repeat actions described in paragraphs (f)(1)(i) through (v) or (f)(2) of this section.

(2) When EPA reviews the adequacy of an implementation plan submission simultaneously with EPA's approval or disapproval of the implementation plan,

(i) EPA's **Federal Register** notice of proposed or direct final rulemaking will serve to notify the public that EPA will be reviewing the implementation plan submission for adequacy.

(ii) The publication of the notice of proposed rulemaking will start a public comment period of at least 30 days.

(iii) EPA will indicate whether the implementation plan submission is adequate and thus can be used for conformity either in EPA's final rulemaking or through the process described in paragraphs (f)(1)(iii) through (v) of this section. If EPA makes an adequacy finding through a final rulemaking that approves the implementation plan submission, such a finding will become effective upon the publication date of EPA's approval in the **Federal Register**, or upon the effective date of EPA's approval if such action is conducted through direct final rulemaking. EPA will respond to comments received directly and review comments submitted through the State process and include the response to comments in the applicable docket.

■ 12. Section 93.119 is amended by:

■ a. Revising the section heading and paragraphs (a) and (b);

■ b. Redesignating paragraphs (c), (d), (e), (f), (g) and (h) as paragraphs (d), (f), (g), (h), (i) and (j);

■ c. Adding new paragraphs (c) and (e);

■ d. Revising newly redesignated paragraphs (d) introductory text and (d)(1);

■ e. Revising newly redesignated paragraph (f)(5), removing the period at the end of newly redesignated paragraph (f)(6) and adding a semicolon in its place, and adding new paragraphs (f)(7) and (f)(8);

■ f. Revising newly redesignated paragraph (g);

■ g. In newly redesignated paragraphs (h) introductory text and (i) introductory text, revising the reference ''paragraphs (b) and (c)'' to read ''paragraphs (b) through (e)''; and,

■ h. In newly redesignated paragraph (j), revising the reference ''paragraphs (b) and (c)'' to read ''paragraphs (b) through (e)''.

The revisions and additions read as follows:

§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

(a) The transportation plan, TIP, and project not from a conforming transportation plan and TIP must satisfy the interim emissions test(s) as described in § 93.109(c) through (l). This criterion applies to the net effect of the action (transportation plan, TIP, or project not from a conforming plan and TIP) on motor vehicle emissions from the entire transportation system.

(b) *Ozone areas.* The requirements of this paragraph apply to all 1-hour ozone and 8-hour ozone NAAQS areas, except for certain requirements as indicated. This criterion may be met:

(1) In moderate and above ozone nonattainment areas that are subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the ''Action'' scenario are less than the emissions predicted in the ''Baseline'' scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(ii) The emissions predicted in the ''Action'' scenario are lower than:

(A) 1990 emissions by any nonzero amount, in areas for the 1-hour ozone NAAQS as described in § 93.109(c); or

(B) 2002 emissions by any nonzero amount, in areas for the 8-hour ozone NAAQS as described in § 93.109(d) and (e).

(2) In marginal and below ozone nonattainment areas and other ozone nonattainment areas that are not subject to the reasonable further progress requirements of CAA section 182(b)(1) if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the ''Action'' scenario are not greater than the emissions predicted in the ''Baseline'' scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(ii) The emissions predicted in the ''Action'' scenario are not greater than:

(A) 1990 emissions, in areas for the 1-hour ozone NAAQS as described in § 93.109(c); or

(B) 2002 emissions, in areas for the 8-hour ozone NAAQS as described in § 93.109(d) and (e).

(c) *CO areas.* This criterion may be met:

(1) In moderate areas with design value greater than 12.7 ppm and serious CO nonattainment areas that are subject to CAA section 187(a)(7) if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the ''Action'' scenario are less than the emissions predicted in the ''Baseline'' scenario, and this can be reasonably expected to be true in the periods between the analysis years; and

(ii) The emissions predicted in the ''Action'' scenario are lower than 1990 emissions by any nonzero amount.

(2) In moderate areas with design value less than 12.7 ppm and not classified CO nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section:

(i) The emissions predicted in the ''Action'' scenario are not greater than the emissions predicted in the ''Baseline'' scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(ii) The emissions predicted in the ''Action'' scenario are not greater than 1990 emissions.

(d) *PM_{10} and NO_2 areas.* This criterion may be met in PM_{10} and NO_2 nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described

in paragraph (f) of this section, one of the following requirements is met:

(1) The emissions predicted in the ''Action'' scenario are not greater than the emissions predicted in the ''Baseline'' scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

* * * * *

(e) *$PM_{2.5}$ areas.* This criterion may be met in $PM_{2.5}$ nonattainment areas if a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section demonstrates that for each analysis year and for each of the pollutants described in paragraph (f) of this section, one of the following requirements is met:

(1) The emissions predicted in the ''Action'' scenario are not greater than the emissions predicted in the ''Baseline'' scenario, and this can be reasonably expected to be true in the periods between the analysis years; or

(2) The emissions predicted in the ''Action'' scenario are not greater than 2002 emissions.

(f) * * *

(5) VOC and/or NO_x in PM_{10} areas if the EPA Regional Administrator or the director of the State air agency has made a finding that one or both of such precursor emissions from within the area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT;

(6) * * *

(7) $PM_{2.5}$ in $PM_{2.5}$ areas; and

(8) Reentrained road dust in $PM_{2.5}$ areas only if the EPA Regional Administrator or the director of the State air agency has made a finding that emissions from reentrained road dust within the area are a significant contributor to the $PM_{2.5}$ nonattainment problem and has so notified the MPO and DOT.

(g) *Analysis years.* (1) The regional emissions analysis must be performed for analysis years that are no more than ten years apart. The first analysis year must be no more than five years beyond the year in which the conformity determination is being made. The last year of the transportation plan's forecast period must also be an analysis year.

(2) For areas using paragraphs (b)(2)(i), (c)(2)(i), (d)(1), and (e)(1) of this section, a regional emissions analysis that satisfies the requirements of § 93.122 and paragraphs (g) through (j) of this section would not be required for analysis years in which the transportation projects and planning assumptions in the ''Action'' and ''Baseline'' scenarios are exactly the same. In such a case, paragraph (a) of this section can be satisfied by documenting that the transportation projects and planning assumptions in both scenarios are exactly the same, and consequently, the emissions predicted in the ''Action'' scenario are not greater than the emissions predicted in the ''Baseline'' scenario for such analysis years.

* * * * *

■ 13. Section 93.120 is amended by revising paragraph (a)(2) to read as follows:

§ 93.120 Consequences of control strategy implementation plan failures.

(a) * * *

(2) If EPA disapproves a submitted control strategy implementation plan revision without making a protective finding, only projects in the first three years of the currently conforming transportation plan and TIP may be found to conform. This means that beginning on the effective date of a disapproval without a protective finding, no transportation plan, TIP, or project not in the first three years of the currently conforming transportation plan and TIP may be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, EPA finds its motor vehicle emissions budget(s) adequate pursuant to § 93.118 or approves the submission, and conformity to the implementation plan revision is determined.

* * * * *

■ 14. Section 93.121 is amended by:

■ a. Revising paragraph (a)(1), redesignating paragraph (a)(2) as (a)(3), adding a new paragraph (a)(2) and revising newly redesignated paragraph (a)(3);

■ b. Amending paragraph (b) introductory text by removing the reference ''§ 93.109(g)'' and adding in its place a reference for ''§ 93.109(l)'', and revising paragraph (b)(1); and

■ c. Adding new paragraph (c).

The revisions and additions read as follows:

§ 93.121 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Laws.

(a) * * *

(1) The project comes from the currently conforming transportation plan and TIP, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis for that transportation plan and TIP;

(2) The project is included in the regional emissions analysis for the currently conforming transportation plan and TIP conformity determination (even if the project is not strictly included in the transportation plan or TIP for the purpose of MPO project selection or endorsement) and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis; or

(3) A new regional emissions analysis including the project and the currently conforming transportation plan and TIP demonstrates that the transportation plan and TIP would still conform if the project were implemented (consistent with the requirements of §§ 93.118 and/or 93.119 for a project not from a conforming transportation plan and TIP).

(b) * * *

(1) The project was included in the regional emissions analysis supporting the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly; or

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, in nonattainment and maintenance areas subject to § 93.109(j) or (k) for a given pollutant/precursor and NAAQS, no recipient of Federal funds designated under title 23 U.S.C. or the Federal Transit Laws shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless the recipient finds that the requirements of one of the following are met for that pollutant/precursor and NAAQS:

(1) The project was included in the most recent conformity determination for the transportation plan and TIP and the project's design concept and scope has not changed significantly; or

(2) The project was included in the most recent conformity determination that reflects the portion of the statewide transportation plan and statewide TIP which are in the nonattainment or maintenance area, and the project's design concept and scope has not changed significantly.

■ 15. Section 93.122 is amended by:

■ (a) Redesignating paragraphs (c), (d), and (e) as paragraphs (d), (e) and (g), respectively;

■ (b) Adding new paragraphs (c) and (f); and

■ (c) Revising newly redesignated paragraphs (g)(1) and (g)(2) introductory text, and adding new paragraph (g)(3).

The revisions and additions read as follows:

§ 93.122 Procedures for determining regional transportation-related emissions.

* * * * *

(c) *Two-year grace period for regional emissions analysis requirements in certain ozone and CO areas.* The requirements of paragraph (b) of this section apply to such areas or portions of such areas that have not previously been required to meet these requirements for any existing NAAQS two years from the following:

(1) The effective date of EPA's reclassification of an ozone or CO nonattainment area that has an urbanized area population greater than 200,000 to serious or above;

(2) The official notice by the Census Bureau that determines the urbanized area population of a serious or above ozone or CO nonattainment area to be greater than 200,000; or,

(3) The effective date of EPA's action that classifies a newly designated ozone or CO nonattainment area that has an urbanized area population greater than 200,000 as serious or above.

* * * * *

(f) *$PM_{2.5}$ from construction-related fugitive dust.* (1) For $PM_{2.5}$ areas in which the implementation plan does not identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the fugitive $PM_{2.5}$ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In $PM_{2.5}$ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive $PM_{2.5}$ as a significant contributor to the nonattainment problem, the regional $PM_{2.5}$ emissions analysis shall consider construction-related fugitive $PM_{2.5}$ and shall account for the level of construction activity, the fugitive $PM_{2.5}$ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

(g) * * *

(1) Conformity determinations for a new transportation plan and/or TIP may be demonstrated to satisfy the requirements of §§ 93.118 (''Motor vehicle emissions budget'') or 93.119 (''Interim emissions in areas without motor vehicle emissions budgets'') without new regional emissions analysis if the previous regional emissions analysis also applies to the new plan and/or TIP. This requires a demonstration that:

(i) The new plan and/or TIP contain all projects which must be started in the plan and TIP's timeframes in order to achieve the highway and transit system envisioned by the transportation plan;

(ii) All plan and TIP projects which are regionally significant are included in the transportation plan with design concept and scope adequate to determine their contribution to the transportation plan's and/or TIP's regional emissions at the time of the previous conformity determination;

(iii) The design concept and scope of each regionally significant project in the new plan and/or TIP are not significantly different from that described in the previous transportation plan; and

(iv) The previous regional emissions analysis is consistent with the requirements of §§ 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or 93.119, as applicable.

(2) A project which is not from a conforming transportation plan and a conforming TIP may be demonstrated to satisfy the requirements of § 93.118 or § 93.119 without additional regional emissions analysis if allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan, the previous regional emissions analysis is still consistent with the requirements of § 93.118 (including that conformity to all currently applicable budgets is demonstrated) and/or § 93.119, as applicable, and if the project is either:

* * * * *

(3) A conformity determination that relies on paragraph (g) of this section does not satisfy the frequency requirements of § 93.104(b) or (c).

§ 93.124 [Amended]

■ 16. Section 93.124 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e) as paragraphs (b) through (d).

§ 93.125 [Amended]

■ 17. In § 93.125, paragraph (a) is amended by revising the reference ''93.119 (''Emissions reductions in areas without motor vehicle emissions budgets'')'' to read ''93.119 (''Interim emissions in areas without motor vehicle emissions budgets''),'' and paragraph (d) is amended by revising the phrase ''emission reduction requirements of § 93.119'' to read ''interim emissions requirements of § 93.119.''

§ 93.126 [Amended]

■ 18. In § 93.126, Table 2 is amended under the heading ''Other'' by revising the entry for ''Emergency or hardship advance land acquisitions (23 CFR 712.204(d))'' to read ''Emergency or hardship advance land acquisitions (23 CFR 710.503).''

[FR Doc. 04–14213 Filed 6–30–04; 8:45 am]

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Heavy-Duty Engine and Vehicle Standards

Federal Register

Thursday,

January 18, 2001

Part V

Environmental Protection Agency

40 CFR Parts 69, 80, and 86

Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 69, 80, and 86

[AMS–FRL–6923–7]

RIN 2060–AI69

Control of Air Pollution from New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The pollution emitted by diesel engines contributes greatly to our nation's continuing air quality problems. Even with more stringent heavy-duty highway engine standards set to take effect in 2004, these engines will continue to emit large amounts of nitrogen oxides and particulate matter, both of which contribute to serious public health problems in the United States. These problems include premature mortality, aggravation of respiratory and cardiovascular disease, aggravation of existing asthma, acute respiratory symptoms, chronic bronchitis, and decreased lung function. Numerous studies also link diesel exhaust to increased incidence of lung cancer. We believe that diesel exhaust is likely to be carcinogenic to humans by inhalation and that this cancer hazard exists for occupational and environmental levels of exposure.

We are establishing a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. As part of this program, new emission standards will begin to take effect in model year 2007, and will apply to heavy-duty highway engines and vehicles. These standards are based on the use of high-efficiency catalytic exhaust emission control devices or comparably effective advanced technologies. Because these devices are damaged by sulfur, we are also reducing the level of sulfur in highway diesel fuel significantly by mid-2006. The program provides substantial flexibility for refiners, especially small refiners, and for manufacturers of engines and vehicles. These options will ensure that there is widespread availability and supply of the low sulfur diesel fuel from the very beginning of the program, and will provide engine manufacturers with the lead time needed to efficiently phase-in the exhaust emission control technology that will be used to achieve the emissions benefits of the new standards.

We estimate that heavy-duty trucks and buses today account for about one-third of nitrogen oxides emissions and one-quarter of particulate matter emissions from mobile sources. In some urban areas, the contribution is even greater. This program will reduce particulate matter and oxides of nitrogen emissions from heavy duty engines by 90 percent and 95 percent below current standard levels, respectively. In order to meet these more stringent standards for diesel engines, the program calls for a 97 percent reduction in the sulfur content of diesel fuel. As a result, diesel vehicles will achieve gasoline-like exhaust emission levels. We are also finalizing more stringent standards for heavy-duty gasoline vehicles, based in part on the use of the low sulfur gasoline that will be available when the standards go into effect.

The clean air impact of this program will be dramatic when fully implemented. By 2030, this program will reduce annual emissions of nitrogen oxides, nonmethane hydrocarbons, and particulate matter by a projected 2.6 million, 115,000 and 109,000 tons, respectively. We project that these reductions and the resulting significant environmental benefits of this program will come at an average cost increase of about $2,000 to $3,200 per new vehicle in the near term and about $1,200 to $1,900 per new vehicle in the long term, depending on the vehicle size. In comparison, new vehicle prices today can range well over $100,000 for larger heavy-duty vehicles. We estimate that when fully implemented the sulfur reduction requirement will increase the cost of producing and distributing diesel fuel by about five cents per gallon.

DATES: This rule will become effective March 19, 2001. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Office of Federal Register as of March 19, 2001.

ADDRESSES: *Comments:* All comments and materials relevant to today's action have been placed in Public Docket No. A–99–06 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460 (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Margaret Borushko, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214–4334, FAX (734) 214–4816, E-mail borushko.margaret@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

This action will affect you if you produce or import new heavy-duty engines which are intended for use in highway vehicles such as trucks and buses, or produce or import such highway vehicles, or convert heavy-duty vehicles or heavy-duty engines used in highway vehicles to use alternative fuels, or produce or import light-duty highway diesel vehicles. It will also affect you if you produce, import, distribute, or sell highway diesel fuel, or sell nonroad diesel fuel.

The following table gives some examples of entities that may have to follow the regulations. But because these are only examples, you should carefully examine the regulations in 40 CFR parts 69, 80, and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble:

Category	NAICS Codes [a]	SIC Codes [b]	Examples of potentially regulated entities
Industry	336112	3711	Engine and Truck Manufacturers
	336120		
Industry	811112	7533	Commercial Importers of Vehicles and
	811198	7549	Vehicle Components
Industry	324110	2911	Petroleum Refiners
Industry	422710	5171	Diesel Fuel Marketers and Distributors
	422720	5172	
industry	484220	4212	Diesel Fuel Carriers

Category	NAICS Codes [a]	SIC Codes [b]	Examples of potentially regulated entities
	484230	4213	

[a] North American Industry Classifications System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's final rule is available electronically on the day of publication from the Environmental Protection Agency Internet Web site listed below. Electronic copies of the preamble, regulatory language, Regulatory Impact Analysis, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality (formerly the Office of Mobile Sources) Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you incur for connecting to the Internet.

Environmental Protection Agency Web Site: *http://www.epa.gov/fedrgstr/* (Either select a desired date or use the Search feature.)

Office of Transportation and Air Quality (OTAQ) Web Site: *http://www.epa.gov/otaq/* (Look in ''What's New'' or under the ''Heavy Trucks/Busses'' topic.)

Please note that due to differences between the software used to develop the document and the software into which document may be downloaded, changes in format, page length, etc. may occur.

Table of Contents

I. Overview

This rule covers the second of two phases in a comprehensive nationwide program for controlling emissions from heavy-duty engines (HDEs) and vehicles. It builds upon the phase 1 program we recently finalized (65 FR 59896, October 6, 2000). That action affirmed the 50 percent reduction in emissions of oxides of nitrogen (NO_X) from 2004 model year highway diesel engines, set in 1997 (62 FR 54693, October 21, 1997), and set new emission standards for heavy-duty gasoline-fueled engines and vehicles for 2005.

This second phase of the program looks beyond 2004, based on the use of high-efficiency exhaust emission control devices and the consideration of the vehicle and its fuel as a single system. In developing this rule, we took into consideration comments received in response to the advance notice of proposed rulemaking (64 FR 26142, May 13, 1999) and the notice of proposed rulemaking (NPRM) (65 FR 35430, June 2, 2000), including comments provided at five public hearings last June.

This program will result in particulate matter (PM) and NO_X emission levels that are 90 percent and 95 percent below the standard levels in effect today, respectively. In order to meet these more stringent standards for diesel engines, the rule mandates a 97 percent reduction in the sulfur content of diesel fuel. The heavy-duty engine standards will be effective starting in the 2007 model year and the low sulfur diesel fuel needed to facilitate the standards will be widely available in September 2006. As a result, diesel vehicles will achieve gasoline-like exhaust emission levels, in addition to their inherent advantages over gasoline vehicles with respect to fuel economy, lower greenhouse gas emissions, and lower evaporative hydrocarbon emissions. The rule also includes more stringent standards for heavy-duty gasoline vehicles. In addition to its impact on heavy-duty vehicle emissions, this rule will make clean diesel fuel available in time for implementation of the light-duty Tier 2 standards.

The standards will result in substantial benefits to public health and welfare and the environment through significant reductions in emissions of NO_X, PM, nonmethane hydrocarbons (NMHC), carbon monoxide (CO), sulfur oxides (SO_X), and air toxics. We project that by 2030, this phase 2 program will reduce annual emissions of NO_X, NMHC, and PM by 2.6 million, 115,000 and 109,000 tons, respectively. These emission reductions will prevent 8,300 premature deaths, over 9,500 hospitalizations, and 1.5 million work days lost. All told the benefits of this rule equal $70.3 billion. A sizeable part of the benefits in the early years of this program come from large reductions in the amount of direct and secondary PM caused by the existing fleet of heavy-duty vehicles. These reductions are due to the use of the higher quality diesel fuel in these vehicles.

A. What Requirements Are Being Set?

There are two basic parts to this program: (1) New exhaust emission standards for heavy-duty highway engines and vehicles, and (2) new quality standards for highway diesel fuel. The systems approach of combining the engine and fuel standards into a single program is critical to the success of our overall efforts to reduce emissions, because the emission standards will not be feasible without the fuel change. The feasibility of the emission standards is based on the use of high-efficiency exhaust emission control devices that would be damaged by sulfur in the fuel. This rule, by providing extremely low sulfur diesel fuel, will also enable cleaner diesel passenger vehicles and light-duty trucks. This is because the same pool of highway diesel fuel also services these light-duty diesel vehicles, and these vehicles can employ technologies similar to the high-efficiency heavy-duty exhaust emission control technologies that will be enabled by the fuel change. We believe these technologies are needed for diesel vehicles to comply with our Tier 2 emissions standards for light-duty highway vehicles (65 FR 6698, February 10, 2000).

We believe that this systems approach is a comprehensive way to enable effective new technologies for clean diesel, affecting all sizes of highway diesel engines, and may translate to future reductions from diesel engines used in nonroad applications too. The fuel change, in addition to enabling new technologies, will also produce emissions and maintenance benefits in the existing fleet of highway diesel vehicles. These benefits will include reduced sulfate PM and sulfur oxides emissions, reduced engine wear and less frequent oil changes, and longer-lasting exhaust gas recirculation (EGR) components on engines equipped with EGR. Heavy-duty gasoline vehicles will also be expected to have much lower emissions due to the transfer of recent technology developments for light-duty applications, and the recent action taken to reduce sulfur in gasoline as part of the Tier 2 rule.

The basic elements of the rule are outlined below. Detailed provisions and justifications for our rule are discussed in subsequent sections.

1. Heavy-Duty Emission Standards

We are finalizing a PM emissions standard for new heavy-duty engines of 0.01 grams per brake-horsepower-hour (g/bhp-hr), to take full effect for diesels in the 2007 model year.[1] We are also finalizing standards for NO_X and NMHC of 0.20 g/bhp-hr and 0.14 g/bhp-hr, respectively. These NO_X and NMHC standards will be phased in together between 2007 and 2010, for diesel engines. The phase-in will be on a percent-of-sales basis: 50 percent from 2007 to 2009 and 100 percent in 2010. This phase-in schedule differs somewhat from the proposed schedule for reasons explained in Section III. Gasoline engines will be subject to these standards based on a phase-in requiring 50 percent compliance in the 2008 model year and 100 percent compliance in the 2009 model year. This phase-in schedule also differs from that proposed for reasons explained in Section III. In addition, we are finalizing our proposal to include turbocharged diesels in the existing crankcase emissions prohibition, effective in 2007.

Standards for complete HDVs will be implemented on the same schedule as for gasoline engine standards. For certification of complete vehicles between 8500 and 10,000 pounds gross vehicle weight rating (GVWR), the standards are 0.2 grams per mile (g/mi) for NO_X, 0.02 g/mi for PM, 0.195 g/mi for NMHC, and 0.032 g/mi for formaldehyde.[2] For vehicles between

[1] Note that throughout this preamble we refer to diesel and gasoline vehicles and engines. We tend to use those terms given the preponderance of vehicles using diesel fuel or gasoline fuel in the U.S. heavy-duty highway market. However, when we refer to a diesel engine, we generally mean any engine using the diesel cycle. When we refer to a gasoline engine or vehicle, we generally mean any Otto-cycle vehicle or engine. Therefore, the emission standards discussed throughout this preamble apply equally to engines and vehicles fueled by alternative fuels, unless otherwise specified in the regulatory text accompanying today's rule.

[2] Vehicle weight ratings in this rule refer to GVWR (the curb weight of the vehicle plus its maximum recommended load of passengers and cargo) unless noted otherwise.

10,000 and 14,000 pounds, the standards are 0.4 g/mi for NO_X, 0.02 g/mi for PM, 0.230 g/mi for NMHC, and 0.040 g/mi for formaldehyde. These standards levels are roughly comparable to the engine-based standards in these size ranges. Note that these standards will not apply to vehicles above 8500 pounds that we classify as medium-duty passenger vehicles as part of our Tier 2 program.

Finally, we are adopting new evaporative emissions standards for heavy-duty engines and vehicles, effective on the same schedule as the gasoline engine and vehicle exhaust emission standards. The new standards for 8500 to 14,000 pound vehicles are 1.4 and 1.75 grams per test for the 3-day diurnal and supplemental 2-day diurnal tests, respectively. Standards levels of 1.9 and 2.3 grams per test will apply for vehicles over 14,000 pounds. These standards represent more than a 50 percent reduction in the numerical standards as they exist today.

The program includes flexibility provisions to facilitate the transition to the new standards and to encourage the early introduction of clean technologies, and adjustments to various testing and compliance requirements to address differences between the new technologies and existing engine-based technologies. These provisions are described in Sections III and VI.

2. Fuel Quality Standards

This rule specifies that, beginning June 1, 2006, refiners must begin producing highway diesel fuel that meets a maximum sulfur standard of 15 parts per million (ppm). All 2007 and later model year diesel-fueled vehicles must be refueled with this new low sulfur diesel fuel. This sulfur standard is based on our assessment of the impact of sulfur on advanced exhaust emission control technologies, and a corresponding assessment of the feasibility of low sulfur fuel production and distribution.

Today's program includes a combination of flexibilities available to refiners to ensure a smooth transition to low sulfur highway diesel fuel. First, refiners can take advantage of a temporary compliance option, including an averaging, banking and trading component, beginning in June 2006 and lasting through 2009, with credit given for early compliance before June 2006. Under this temporary compliance option, up to 20 percent of highway diesel fuel may continue to be produced at the existing 500 ppm sulfur maximum standard. Highway diesel fuel marketed as complying with the 500 ppm sulfur standard must be segregated from 15 ppm fuel in the distribution system, and may only be used in pre-2007 model year heavy-duty vehicles. Second, we are providing additional hardship provisions for small refiners to minimize their economic burden in complying with the 15 ppm sulfur standard. Third, we are providing additional flexibility to refiners subject to the Geographic Phase-in Area (GPA) provisions of the Tier 2 gasoline sulfur program, which will allow them the option of staggering their gasoline and diesel investments. Finally, we are adopting a general hardship provision for which any refiner may apply on a case-by-case basis under certain conditions. These hardship provisions, coupled with the temporary compliance option, will provide a ''safety valve'' allowing up to 25 percent of highway diesel fuel produced to remain at 500 ppm for these transitional years to minimize any potential for highway diesel fuel supply problems.

In addition, today's program includes unique provisions for implementing the low sulfur diesel fuel program in the State of Alaska, given that it is exempt from the current 500 ppm standard. Certain U.S. territories are excluded from both the new engine standards and highway diesel fuel standards.

The compliance provisions for ensuring diesel fuel quality are essentially consistent with those that have been in effect since 1993 under the existing 500 ppm sulfur standard (55 FR 34120, August 21, 1990). Additional compliance provisions have been established primarily during the transition years of the program to verify refiners' compliance with the temporary compliance option to ensure the two grades of highway diesel fuel remain segregated, and to discourage misfueling of model year 2007 and later diesel vehicles.

B. Why is EPA Taking This Action?

1. Heavy-Duty Vehicles Contribute to Serious Air Pollution Problems

As discussed in detail in Section II, emissions from heavy-duty vehicles contribute greatly to a number of serious air pollution problems, and would have continued to do so into the future absent further controls to reduce these emissions. First, heavy-duty vehicles contribute to the health and welfare effects of ozone, PM, NO_X, SO_X, and volatile organic compounds (VOCs), including toxic compounds such as formaldehyde. These adverse effects include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), changes in lung function and increased respiratory symptoms, changes to lung tissues and structures, altered respiratory defense mechanisms, chronic bronchitis, and decreased lung function. Ozone also causes crop and forestry losses, and PM causes damage to materials and soiling of commonly used building materials and culturally important items such as statues and works of art. Second, NO_X, SO_X and PM contribute to substantial visibility impairment in many parts of the U.S. Third, NO_X emissions from heavy-duty trucks contribute to the acidification, nitrification and eutrophication of water bodies. Fourth, the Agency has concluded, and the Clean Air Scientific Advisory Committee has approved in public session, that diesel exhaust is likely to be carcinogenic to humans.

Millions of Americans live in areas with unhealthful air quality that currently endangers public health and welfare. Without emission reductions from the standards for heavy-duty vehicles, there is a significant risk that an appreciable number of 45 areas with 128 million people across the country will violate the 1-hour ozone national ambient air quality standard (NAAQS) during the period when these standards will take effect. Furthermore, our analysis shows that PM_{10} concentrations in 10 areas with a population of 28 million people face a significant risk of exceeding the PM_{10} NAAQS without significant additional controls between 2007 and 2030. Under the mandates and authorities in the Clean Air Act, Federal, state, and local governments are working to bring ozone and particulate levels into compliance with the 1-hour ozone and PM_{10} NAAQS through State Implementation Plan (SIP) attainment and maintenance plans, and to ensure that future air quality reaches and continues to achieve these health-based standards. The reductions in this rulemaking will play a critical part in these important efforts to attain and maintain the NAAQS. In addition, reductions from this action will also reduce public health and welfare effects associated with ozone and fine PM at concentrations that do not constitute a violation of the 1-hour ozone and PM_{10} NAAQS.

Emissions from heavy-duty vehicles account for substantial portions of the country's ambient PM and NO_X levels. (NO_X is a key precursor to ozone formation). By 2007, we estimate that heavy-duty vehicles will account for 28 percent of mobile source NO_X emissions and 20 percent of mobile source PM emissions. These proportions are even

higher in some urban areas, such as in Sacramento, Atlanta, and Washington, DC, where HDVs contribute over 34 percent of the mobile source NO_X emissions, and in Santa Fe, Los Angeles, and Hartford, where heavy-duty vehicle PM emissions account for 38, 25 and 30 percent of the mobile source PM emissions inventory, respectively. Over time, the relative contribution of diesel engines to air quality problems will go even higher if diesel-equipped light-duty vehicles become more popular, as is expected by some automobile manufacturers. The PM and NO_X standards for heavy-duty vehicles in this rule will have a substantial impact on emissions. By 2030, NO_X emissions from heavy-duty vehicles under today's standards will be reduced by 2.6 million tons, and PM emissions will decline by about 109,000 tons, dramatically reducing this source of NO_X and PM emissions. Urban areas, which include many poorer neighborhoods, can be disproportionately impacted by HDV emissions, and these neighborhoods will thus receive a relatively larger portion of the benefits expected from new HDV emissions controls.

In addition to its contribution to PM inventories, diesel exhaust PM is of special concern because it has been implicated in an increased risk of lung cancer and respiratory disease. The EPA draft Health Assessment Document for Diesel Exhaust (Draft Assessment) was reviewed in public session by the Clean Air Scientific Advisory Committee (CASAC) on October 12–13, 2000.[3] The Agency has concluded, and the CASAC approved at this session, that diesel exhaust is likely to be carcinogenic to humans. State and local governments, in their efforts to protect the health of their citizens and comply with requirements of the Clean Air Act (CAA or ''the Act''), have recognized the need to achieve major reductions in diesel PM emissions, and have been seeking Agency action in setting stringent new standards to bring this about.[4]

2. Technology-Based Solutions

Although the air quality problems caused by diesel exhaust are challenging, we believe they can be resolved through the application of high-efficiency emissions control technologies. As discussed in detail in Section III, the development of diesel emissions control technology has advanced in recent years so that very large emission reductions (in excess of 90 percent) are possible, especially through the use of catalytic emission control devices installed in the vehicle's exhaust system and integrated with the engine controls. These devices are often referred to as ''exhaust emission control'' or ''aftertreatment'' devices. Exhaust emission control devices, in the form of the well-known catalytic converter, have been used in gasoline-fueled automobiles for 25 years, but have had only limited application in diesel vehicles.

Based on the Clean Air Act requirements discussed in Section I.B.3, we are setting stringent new emission standards that will result in the use of these diesel exhaust emission control devices (see Section III). We are also finalizing changes to diesel fuel quality standards in order to enable these high-efficiency technologies (Section IV). Heavy-duty gasoline engines will also be able to reach the significantly lower emission levels envisioned in this rule by relying on the transfer of recent technology developments for light-duty applications, given the recent action taken to reduce sulfur in gasoline (65 FR 6698, February 10, 2000).

To meet the new standards, application of high-efficiency exhaust emission controls for both PM and NO_X will be needed. High-efficiency PM exhaust emission control technology has been available for several years, although engine manufacturers have generally not needed this technology in order to meet our PM emission standards. This technology has continued to improve over the years, especially with respect to durability and robust operation in use. It has also proven extremely effective in reducing exhaust hydrocarbon emissions. Thousands of such systems are now in use in fleet programs, especially in Europe. However, as discussed in detail in Section III, these systems are very sensitive to sulfur in the fuel. For the technology to be viable and capable of meeting the standards, we believe that it will require diesel fuel with sulfur content capped at the 15 ppm level.

Similarly, high-efficiency NO_X exhaust emission control technology will be needed if heavy-duty vehicles are to attain the new standards. We believe this technology, like the PM technology, is dependent on the 15 ppm maximum diesel fuel sulfur levels being adopted in this rule to be feasible and capable of achieving the standards. Similar high-efficiency NO_X exhaust emission control technology has been quite successful in gasoline direct injection engines that operate with an exhaust composition fairly similar to diesel exhaust. However, as discussed in Section III, application of this technology to diesels has some additional engineering challenges. In that section we discuss the current status of this technology. We also discuss the major development issues still to be addressed and the development steps that can be taken to address these issues. With the lead time available and the certainty of low-sulfur diesel fuel established by today's action, the evidence leaves us confident that the application of this technology to diesels will proceed at a reasonable rate of progress and will result in systems capable of achieving the standards.

The need to reduce the sulfur in diesel fuel is driven by the requirements of the exhaust emission control technology that we project will be needed to meet the standards. The challenge in accomplishing the sulfur reduction is driven by the feasibility of needed refinery modifications, and by the costs of making the modifications and running the equipment. Today, a number of refiners are acting to provide low sulfur diesel to some markets. In consideration of the impacts that sulfur has on the efficiency, reliability, and fuel economy impact of diesel engine exhaust emission control devices, we believe that controlling the sulfur content of highway diesel fuel to the 15 ppm level is necessary and feasible, and, in the context of this rule's overall program, cost effective.

3. Basis For Action Under the Clean Air Act

Section 202(a)(1) of the Act directs us to establish standards regulating the emission of any air pollutant from any class or classes of new motor vehicles or engines that, in the Administrator's judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 202(a)(3) requires that EPA set standards for heavy-duty trucks that reflect the greatest degree of emission reduction achievable through the application of technology which we determine will be available for the model year to which the standards apply. We are to give appropriate consideration to cost, energy, and safety factors associated with the application of such technology. We may revise such technology-based standards, taking costs into account, on the basis of information concerning the effects of air pollution from heavy-duty vehicles or engines and other sources of mobile source related

[3] EPA (2000) Review of EPA's Health Assessment Document for Diesel Exhaust (EPA 600/8–90/057E). Review by the Clean Air Scientific Advisory Committee (CASAC) December 2000. EPA–SAB–CASAC–01–003.

[4] For example, see letter dated July 13, 1999 from John Elston and Richard Baldwin on behalf of the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (docket A–99–06, item II–D–78).

pollutants on the public health and welfare. Section 202(a)(3)(C) requires that promulgated standards apply for no less than three years and go into effect no less than 4 years after promulgation. This rule conforms with these statutory requirements.

We believe the evidence provided in Section III and the Regulatory Impact Analysis (RIA) indicates that the stringent emission standards finalized today are feasible and reflect the greatest degree of emission reduction achievable in the model years to which they apply. We have given appropriate consideration to costs in choosing these standards. Our review of the costs and cost-effectiveness of these standards indicate that they will be reasonable and comparable to the cost-effectiveness of other emission reduction strategies that have been required or could be required in the future. We have also reviewed and given appropriate consideration to the energy factors of this rule in terms of fuel efficiency and effects on diesel fuel supply, production, and distribution, as discussed below, as well as any safety factors associated with these standards.

The information regarding air quality and the contribution of heavy-duty engines to air pollution in Section II and the RIA provides strong evidence that emissions from such engines significantly and adversely impact public health or welfare. First, there is a significant risk that several areas will fail to attain or maintain compliance with the NAAQS for 1-hour ozone concentrations or PM_{10} concentrations during the period that these new vehicle and engine standards will be phased into the vehicle population, and that heavy-duty engines contribute to such concentrations, as well as to concentrations of other NAAQS-related pollutants. This risk will be significantly reduced by the standards adopted today; however, the evidence indicates that some risk remains even after the reductions achieved by these new controls on heavy-duty vehicles and diesel fuel. Second, EPA believes that diesel exhaust is likely to be carcinogenic to humans. The risk associated with exposure to diesel exhaust includes the particulate and gaseous components. Some of the toxic air pollutants associated with emissions from heavy-duty vehicles and engines include benzene, formaldehyde, acetaldehyde, dioxin, acrolein, and 1,3-butadiene. Third, emissions from heavy-duty engines contribute to regional haze and impaired visibility across the nation, as well as acid deposition, POM deposition, eutrophication and nitrification, all of which are serious environmental welfare problems.

Based on this evidence, EPA believes that, for purposes of section 202(a)(1), emissions of NO_X, VOCs, SO_x and PM from heavy-duty trucks can reasonably be anticipated to endanger the public health or welfare. In addition, this evidence indicates that it will not be appropriate to modify the technology-based standards pursuant to section 202(a)(3)(B). EPA believes that it is required under section 202(a)(3)(A) to set technology-based standards that meet the criteria of that provision, and is not required to make an affirmative determination under section 202(a)(1). Instead EPA is authorized to take air quality into consideration under section 202(a)(3)(B) in deciding whether to modify or not set standard under section 202(a)(3)(A). In this case, however, EPA believes the evidence fully supports a determination under section 202(a)(1) to set standards, and a determination not to modify such standards under section 202(a)(3)(B).

In addition, there is significant evidence that emissions from heavy-duty trucks contribute to levels of ozone such that large segments of the national population are expected to experience prolonged exposure over several hours at levels that present serious concern for the public health and welfare. The same is true for exposure to fine PM. These public health and welfare problems are expected to occur in many parts of the country, including areas that are in compliance with the 1-hour ozone and PM_{10} NAAQS (PM_{10} is particulate matter that is 10 microns or smaller). This evidence is an additional reason why the controls finalized today are justified and appropriate under the Act. While EPA sees this as additional support for this action, EPA also believes that the evidence of air pollution problems summarized above and described in greater detail elsewhere is an adequate justification for this rule independent of concern over prolonged exposure to ozone and fine PM levels.

Section 211(c) of the CAA allows us to regulate fuels where emission products of the fuel either: (1) Cause or contribute to air pollution that reasonably may be anticipated to endanger public health or welfare, or (2) will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it will be in general use were such a regulation to be promulgated. This rule meets each of these criteria. The discussion of the first test is substantially the same as the above discussion for the heavy-duty engine standards, because SO_x and sulfate PM emissions from heavy-duty diesel vehicles are due to sulfur in diesel fuel. The substantial adverse effect of high diesel sulfur levels on diesel control devices or systems expected to be used to meet the heavy-duty standards is discussed in depth in Section III.F and in the RIA. In addition, our authority under section 211(c) is discussed in more detail in Appendix A to the RIA.

C. Putting This Rule In Perspective

There are several helpful perspectives to establish in understanding the context for this rule: the growing popularity of diesel engines, past progress and new developments in diesel emissions control, Tier 2 light-duty emission standards and other related EPA initiatives (besides the above-discussed rulemaking for highway heavy-duty engine emission standards in 2004), and recent actions and plans to control diesel emissions by the States and in other countries.

1. Diesel Popularity

The diesel engine is increasingly becoming a vital workhorse in the United States, moving much of the nation's freight, and carrying out much of its farm, construction, and other labor. Diesel engine sales have grown significantly over the last decade, so that now about a million new diesel engines are put to work in the U.S. every year. Unfortunately, these diesel engines emit large quantities of harmful pollutants annually.

Furthermore, although diesel emissions in this country come mostly from heavy-duty trucks and nonroad equipment, an additional source may grow out of auto manufacturers' plans to greatly increase the sales of diesel-powered light-duty vehicles (LDVs) and especially of light-duty trucks (LDTs), a category that includes the fast-selling sport-utility vehicles, minivans, and pickup trucks. These plans reflect the continuation of an ongoing dieselization trend, a trend recently most evident in the growing popularity of diesel-powered light heavy-duty trucks (8500 to 19,500 pounds). Diesel market penetration is working its way from larger to smaller highway applications and to a broader array of nonroad equipment applications. Finally, especially in Europe where diesels have already gained a broad consumer acceptance, the diesel engine is increasingly viewed as an attractive technology option for reducing emissions of gases that contribute to

global warming, because it has greater operating efficiency than a gasoline engine.

2. Past Progress and New Developments

Since the 1970's, highway diesel engine designers have employed numerous strategies to meet our emissions standards, beginning with smoke controls, and focusing in the 1990's on increasingly stringent NO_X, hydrocarbon, and PM standards. These strategies have generally focused on reducing engine-out emissions and not on exhaust emission controls, although relatively low-efficiency oxidation catalysts have been applied in some designs to reduce PM, with the recognition that their effectiveness is limited by sulfur in the fuel. On the fuel side, we set quality standards that provided emissions benefits by limiting the amount of sulfur and aromatics in highway diesel fuel beginning in 1993 (55 FR 34120, August 21, 1990). Our most recent round of standard setting for heavy-duty highway diesels occurred in 1997 (62 FR 54693, October 21, 1997), effective with the 2004 model year. These standards were recently reviewed in a final rulemaking (65 FR 59896, October 6, 2000). These actions will result in engines that emit only a fraction of the NO_X, hydrocarbons, and PM produced by engines manufactured just a decade ago. We consider this an important first phase of our current initiative to reconcile the diesel engine with the environment.

Nevertheless, certain characteristics inherent in the way diesel fuel combustion occurs have prevented achievement of emission levels comparable to those of today's gasoline-fueled vehicles. Although diesel engines provide advantages in terms of fuel economy, durability, and evaporative emissions, and have inherently low exhaust emissions of hydrocarbons and carbon monoxide, controlling NO_X emissions is a greater challenge for diesel engines than for gasoline engines, primarily because of the ineffectiveness of three-way catalysis in the oxygen-rich and relatively cool diesel exhaust environment. Similarly, PM emissions, which are inherently low for properly operating gasoline engines, are more difficult to control in diesel engines, because the diesel combustion process tends to form soot particles. The challenge is somewhat complicated by the fact that historical diesel NO_X control approaches tend to increase PM, and vice versa, but both are harmful pollutants that need to be controlled.

Considering the air quality impacts of diesel engines and the potential for growth of diesels in the lighter-duty portion of the market, it is imperative that progress in diesel emissions control continue. Significant progress has already been made in the design of exhaust emission control devices for diesel applications, driven in part by the challenge presented by the stringent Tier 2 standards for light-duty vehicles. As discussed in detail in Section III, new exhaust emission control technologies for NO_X, PM, and hydrocarbon reduction will allow a major advancement in diesel emissions control of a magnitude comparable to that ushered in by the automotive catalytic converter in the 1970's. However, changes in diesel fuel quality will be needed to enable these high-efficiency exhaust emission control devices.

3. Tier 2 Emissions Standards

Auto manufacturers' design plans for new light-duty diesel vehicle models will be greatly affected by our recent adoption of stringent new emission standards for light-duty highway vehicles (referred to as ''Tier 2'' standards) that will phase in between 2004 and 2009. These Tier 2 standards will require significant improvements in electronic engine controls and catalysts on gasoline vehicles. We anticipate that these advances will be transferred over to heavy-duty gasoline vehicles in meeting the standards finalized in this rule. The Tier 2 NO_X and PM standards, that apply equally to gasoline and diesel vehicles, will also require the use of high-efficiency emission control technologies on light-duty diesel vehicles. The low sulfur highway diesel fuel brought about by this rule will make it possible for designers to employ these high-efficiency exhaust emission control technologies in these light-duty applications. The timing of the fuel change provides for the use of these devices in time to satisfy Tier 2 phase-in requirements.

The Tier 2 program phases in interim and final standards over a number of years, providing manufacturers the option of delaying some of their production of final Tier 2 designs until later in the phase-in. For vehicles up to 6000 lbs GVWR (LDVs) and light light-duty trucks (LLDTs)), the interim standards begin in 2004 and phase out by 2007, as they are replaced by the final Tier 2 standards. For vehicles between 6000 and 8500 lbs (heavy light-duty trucks (HLDTs)), the interim standards begin in 2004 and phase out by 2009 as they are replaced by the final Tier 2 standards. A new category of vehicles between 8,500 and 10,000 lbs, medium-duty passenger vehicles (MDPVs), will follow the same phase-in schedule as HLDTs.

Our assessment in the Tier 2 final rule is that the interim standards are feasible for diesel vehicles without a need for fuel quality changes. Manufacturers can take advantage of the flexibilities provided in the Tier 2 program to delay the need for light-duty diesels to meet the final Tier 2 levels until late in the phase-in period (as late as 2007 for LDVs and LLDTs, and 2009 for HLDTs and MDPVs). However, low sulfur fuel is expected to be needed for diesel vehicles designed to meet the final NO_X and PM standards, because these vehicles are likely to employ light-duty versions of the sulfur-sensitive exhaust emission control technologies discussed in Section III. The gasoline quality changes and light-duty gasoline engine developments that will result from the Tier 2 rule will also help make it feasible for heavy-duty gasoline engines to meet the standards in this rule.

4. Mobile Source Air Toxics Rulemaking

Passenger cars, on-highway trucks, and nonroad equipment emit hundreds of different compounds and elements. Several of these are considered to be known, likely, or possible human carcinogens. These include diesel exhaust, plus several VOCs such as acetaldehyde, benzene, 1,3-butadiene, formaldehyde, and acrolein. Trace metals may also be present in heavy-duty diesel engine emissions, resulting from metals in fuels and lubricating oil, and from engine wear. Several of these metals have carcinogenic and mutagenic effects.

Important reductions in these and other mobile source air toxics have occurred under existing programs established under Clean Air Act Sections 202(a) (on-highway engine requirements), 211 (the fuel requirements), and 213 (nonroad engine requirements). Although these programs are primarily designed for control of criteria pollutants, especially ozone and PM_{10}, they also achieve important reductions in diesel PM and gaseous air toxics through VOC and hydrocarbon controls.

In addition to these programs, Section 202(l)(2) of the Act directs us to consider additional controls to reduce emissions of hazardous air pollutants from motor vehicles, their fuels, or both. Those standards are to reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into account existing standards, costs, noise, energy, and safety factors. We published a proposed rule on mobile source air toxics on August 4,

2000 (65 FR 48058). This MSAT final rule was signed on December 20, 2000. Interested parties should refer to the final rule if interested in the ultimate form of the regulation.

The mobile source air toxics (MSATs) rule consists of four parts. First, we identify a list of 21 MSATs that are known to be emitted from motor vehicles or their fuels and are considered by the Agency to pose potential adverse human health risks. Diesel exhaust is included on this MSAT list because, as discussed in Section II, human epidemiological studies have suggested that diesel exhaust is associated with increased risk of adverse respiratory effects and lung cancer. Second, the MSAT rule considers the contribution of mobile sources to the nation's air toxics inventory and evaluates the toxics benefits of existing mobile source emission control programs. The benefits of the program as proposed are included in this analysis. Third, the MSAT final rule considers whether additional controls are appropriate at this time, given technological feasibility, cost, and the other criteria specified in the Act. The final rule includes a toxics performance standard applicable to reformulated gasoline and anti-dumping standards that apply to conventional gasoline. With regard to additional vehicle-based controls, we proposed that it is not appropriate at this time to set more stringent standards than the technology forcing standards found in this rule and our recently adopted Tier 2 rulemaking. Finally, because of our concern about the potential future health impacts of exposure to the public of air toxics from the remaining emissions from mobile sources in the future, we continue our toxics-related research activities and to conduct a future rulemaking to evaluate whether, based on the additional data, additional mobile source air toxics controls should be adopted. This rulemaking would be completed no later than 2004.

EPA also intends to rely on today's rule to satisfy in part its obligations under section 202(l) of the Clean Air Act. In the mobile source air toxics NPRM, the Agency proposed a list of mobile source air toxics, including diesel exhaust, as well as a number of specific constituents of heavy-duty vehicle exhaust (gasoline and diesel).[5] The emissions standards established in today's action result in the greatest achievable reductions of diesel PM and heavy-duty vehicle NMHC. The Agency is scheduled to finalize the mobile source air toxics rulemaking on or before December 20, 2000.

5. Nonroad Engine Standards and Fuel

Although this rule covers only highway diesel engines and fuel, it is clear that potential requirements for nonroad diesel engines and fuel are related. It is expected that nonroad diesel fuel quality, currently unregulated, may need to be controlled in the future in order to reduce the large contribution of nonroad engines to NO_X and PM inventories. Refiners, fuel distributors, states, environmental organizations, and others have asked that we provide as much information as possible about the future specifications for both types of fuel as early as possible.

We do plan to give further consideration to additional control of nonroad engine emissions. As discussed below in Section VIII, an effective control program for these engines requires the resolution of several major issues relating to engine emission control technologies and how they are affected by fuel sulfur content. The many issues connected with any rulemaking for nonroad engines and fuel warrant serious attention, and we believe it is premature for us to take any action on this initiative in this rule. We plan to initiate action in the future to formulate proposals that would address both nonroad diesel fuel and engines.

6. State Initiatives

The California Air Resources Board (ARB) and local air quality management districts within California are also pursuing measures to better control diesel emissions. Key among these efforts is work resulting from the Board's designation of particulate emissions from diesel-fueled engines as a toxic air contaminant (TAC) on August 27, 1998. TACs are air pollutants that may cause or contribute to an increase in death or serious illness or may pose a present or future hazard to human health. The TAC designation was based on research studies showing that emissions from diesel-fueled engines may cause cancer in animals and humans, and that workers exposed to higher levels of emissions from diesel-fueled engines are more likely to develop lung cancer.

In September 2000 the ARB approved a Diesel Risk Reduction Plan developed by its staff following an extensive public process.[6] This plan includes several California measures related to highway diesel vehicles, including the major elements of the program we are establishing on a nationwide basis in this final rule. Because truck travel from other states has a large effect on California's air quality, the plan and the Board's resolution further encourages the EPA adopt this nationwide program, as well as other diesel-related emissions reduction programs.

The ARB has also adopted stringent new emission requirements for urban transit buses and is considering similar requirements for school buses.[7] This program is aimed at encouraging the use of clean alternative fuels and high-efficiency diesel emission control technologies. Their program includes requirements for zero-emissions buses, fleet average NO_X levels, and retrofits for PM control, as well as model year 2007 NO_X and PM standards levels of 0.2 and 0.01 g/bhp-hr, respectively (equal to the levels finalized in this rule). It also requires that all diesel fuel used by transit agencies after July 1, 2002 must meet a cap of 15 ppm sulfur. This is a much earlier schedule than that finalized in this rule, to support the ARB's proposed transit bus fleet program.

Other states, most notably Texas, have taken steps toward adopting programs for cleaner diesel fuel and cleaner diesel engines. On December 6, 2000, the Texas Natural Resource Conservation Commission adopted a program that, among other things, would require the capping of diesel fuel sulfur levels in many counties to 15 ppm by June 2006.[8] This proposal exemplifies the importance that states with air quality problems have attached to clean diesel fuel, and specifically to the 15 ppm maximum sulfur requirement in 2006 being set in this rule

7. Retrofit Programs

Many States facing air quality improvement challenges have expressed strong interest in programs that will reduce emissions from existing highway and nonroad diesel engines through the retrofitting of these engines with improved emission control devices. The urban transit bus program adopted by the California ARB includes such a retrofit requirement as one of its major components (see Section I.C.6). In March 2000 we announced our own Diesel Retrofit Initiative to support and

[5] 65 FR 48058, August 4, 2000.

[6] State of California Air Resources Board Resolution 00–30, September 28, 2000.

[7] ''Notice of Public Hearing To Consider the Adoption of a Public Transit Bus Fleet Rule and Emission Standards For New Urban Buses'', California ARB, November 30, 1999, and ARB Resolution 00–2, dated February 24, 2000.

[8] Title 30, Texas Administrative Code, Chapter 114, Subchapter H, Division 2. Also see Texas Natural Resource Conservation Commission website www.tnrcc.state.tx.us.

encourage fleet operators, air quality planners, and retrofit manufacturers in creating effective retrofit programs. These programs are appealing because the slow turnover of the diesel fleet to the new low-emitting engines makes it difficult to achieve near-term air quality goals through new engine programs alone. Some of the exhaust emission control technologies discussed in this rule are especially appealing for use in retrofits because they can be fitted to an existing vehicle as add-on devices without major engine modifications, although some of the more sophisticated systems that require careful control of engine parameters may be more challenging.

Because of the uncertainty at this time in how and when such programs may be implemented, our analysis for today's rule does not calculate any benefits from them. Nevertheless, we believe that this program can enable the viability of these retrofit technologies. We expect that large emission benefits from the existing fleet could be realized as a result of the fuel changes we are finalizing here, combined with retrofit versions of the technologies that will be developed in response to the finalized engine standards. These benefits will be especially important in the early years of the program when new vehicles standards are just beginning to have an impact, and when States and local areas need to gain large reductions to attain air quality goals.

8. Actions In Other Countries

There is substantial activity taking place in many countries related to the regulation of diesel fuel and engines. The large light-duty vehicle market share enjoyed by diesels in many European countries has helped to stir innovation in dealing with diesel emissions problems. Advanced emissions control technologies are being evaluated there in the in-use fleet and experience gained from these trials is helping to inform the diesel emissions control discussion in the U.S. In addition, several European countries have low sulfur diesel fuel, with maximum sulfur levels varying from 10 to 50 ppm, and so experience gained from the use of these fuels, though not completely transferable to the U.S. situation, also provides valuable experience. European Union countries will limit sulfur in diesel fuel to 50 ppm by 2005, and even more aggressive plans are being discussed or implemented. The United Kingdom made a rapid conversion to 50 ppm maximum sulfur diesel fuel in 1999 by offering tax incentives. This change occurred with much smaller refinery investments than had been predicted, and some refinery production there is actually at levels well below the 50 ppm cap. Germany is moving forward with plans to introduce a 10 ppm sulfur cap for diesel fuel by 2003, also via tax incentives, and is attempting to get the 50 ppm specification that was adopted by the European Commission revised downward to the 10 ppm cap level. The Commission is reviewing the implications of moving to this level.

One European country has had extensive experience with the transition to low sulfur diesel fuel. In the early 1990's, Sweden decided to take advantage of the environmental benefits of 10 ppm sulfur/low aromatics fuel by introducing it with a reduction in the diesel fuel tax. The program has been quite successful, and in excess of 90 percent of the highway diesel fuel used there is of this 10 ppm maximum sulfur class.[9]

The government of Canada has expressed its intent to harmonize its fuel regulations with the U.S. fuels standards being adopted today.[10] This would simplify the operation of new-technology vehicles that cross the U.S-Canada border. However, the success of the U.S. program does not depend on harmonized diesel fuel standards, and Section VI.H discusses how differences between the future fuel specifications in the U.S. and those in Canada and Mexico may be accommodated.

II. The Air Quality Need and Projected Benefits

A. Overview

Heavy-duty vehicle emissions contribute to air pollution with a wide range of adverse health and welfare impacts. Emissions of VOC, CO, NO_X, SO_x, and PM from HD vehicles contribute a substantial percentage of the precursors or direct components of ambient concentrations of ozone, PM, sulfur and nitrogen compounds, aldehydes, and substances known or considered likely to be carcinogens. Emissions of VOCs include some specific substances known or suspected to cause cancer. Of particular concern is human epidemiological evidence linking diesel exhaust to an increased risk of lung cancer, and the Agency is also concerned about the noncancer health effects of diesel exhaust We have finalized on December 20, 2000 a rule which lists diesel particulate matter and diesel exhaust organic gases as a mobile source air toxic under section 202(l) of the Clean Air Act, and the particulate matter standard finalized today reflects the greatest degree of emissions reductions achievable under section 202(l) for on-highway heavy-duty vehicle PM emissions. Heavy-duty vehicle emissions also cause adverse environmental effects including visibility reductions, acid rain, nitrification and eutrophication of water bodies.

Emissions from heavy-duty vehicles, which are predominantly diesel-powered, account for substantial portions of the country's ambient PM and ground-level ozone levels. By 2007, we estimate that heavy-duty vehicles will account for 28 percent of mobile source NO_X emissions (including highway and non-road), and 20 percent of mobile source PM emissions. These proportions are even higher in some urban areas, such as Atlanta and Los Angeles. Urban areas, which include many poorer neighborhoods, can be disproportionately impacted by HDV emissions because of heavy traffic in and out of densely populated urban areas.

The Agency developed new emissions inventories and conducted new air quality modeling for this rule to determine the risk of exposure to unhealthy ambient concentrations of ozone and particulate matter in 2007, 2020 and 2030. This analysis, supplemented with local air quality modeling and other information on emissions and air quality trends, indicates that an appreciable number of the 45 areas with a total population of 128 million people face a significant risk of violating the 1-hour ozone standard between 2007 and 2030. Ten PM_{10} nonattainment areas with 28 million people face a significant risk of experiencing particulate matter levels that violate the PM_{10} standard during the same period.

Under the mandates and authorities in the Clean Air Act, federal, state, and local governments are working to bring ozone and particulate levels into compliance with the 1-hour ozone and PM_{10} NAAQS through SIP attainment plans. Areas that reach attainment without reductions from this rule are likely to need additional reductions to ensure that future air quality continues to achieve ozone and PM standards, and areas that seek redesignation to attainment may use the reductions from this rule in future maintenance plans.

The heavy-duty vehicle and engine emission standards, along with the diesel fuel sulfur standard finalized today, will have a dramatic impact in

[9] Memo from Thomas M. Baines to Docket A–99–06, October 29, 1999, Docket #A–99–06, Item II–G–12.

[10] ''Process Begins to Develop Long term Agenda to Reduce Air Pollution from Vehicles and Fuels'', Environment Canada press release, May 26, 2000.

reducing the large contribution of HDVs to air pollution. These standards will result in substantial benefits to public health and welfare through significant annual reductions in emissions of NO_X, PM, NMHC, carbon monoxide, sulfur dioxide, and air toxics. For example, we project a 1.8 million ton reduction in NO_X emissions from HD vehicles in 2020, which will increase to 2.6 million tons in 2030 when the current HD vehicle fleet is completely replaced with newer HD vehicles that comply with these emission standards. When coupled with the emission reductions projected to result from the Phase 1 (model year 2004) HDV standards, the emission reductions from heavy-duty vehicles are projected to be as large as the substantial reductions the Agency expects from light-duty vehicles as a result of its recently promulgated Tier 2 rulemaking.

In sum, the Agency's air quality modeling and other evidence demonstrates that ambient concentrations of ozone, particulate matter, sulfur and nitrogen compounds, VOCs, air toxics, CO and diesel exhaust are anticipated to endanger public health, welfare and the environment in the time period between 2007 and 2030. Emission reductions expected from today's action are predicted to lessen future ambient concentrations of ozone and particulate matter and associated adverse public health and welfare effects.

B. Public Health and Welfare Concerns

1. Health and Welfare Concerns Raised During Public Hearings

The Agency received a significant number of comments on this section during the public hearings and in written comments from interested parties. Comments are addressed in this section as well as in the Response to Comment document that accompanies this action.

Throughout the five public hearings held around the country on the proposed heavy-duty engine and diesel fuel rule, the Agency received strong public support at each venue for increasing the stringency of heavy-duty truck and bus emission standards, and for further controls on sulfur in diesel fuel, in order to enable the necessary exhaust emission control. In addition to the 55,000 comments received from citizens in support of the Agency proposal to clean diesel fuel by mid-2006 and reduce emissions from diesel engines in 2007, we received 8,500 comments from citizens urging the Agency to act prior to 2007.

Public officials and representatives of environmental, public health, or community-based organizations testified regularly about the link between public health ailments, such as asthma and lung cancer, and air pollution caused by diesel exhaust and particulate matter. In different ways, many noted that the impact of diesel soot is compounded by the fact that it is discharged at street level where people live and breathe. A regular complaint was the close proximity of bus depots, transfer terminals, and heavily-trafficked roadways to homes and apartment buildings, and in particular, to hospitals, playgrounds and schools. A common theme revolved around the notion that since asthma is an incurable disease, it was of utmost importance to help reduce the severity and frequency of attacks by reducing environmental triggers such as ozone, particulate matter and diesel exhaust.

Major industries represented during these public hearings were the heavy-duty vehicle engine manufacturers, the oil industry, and the commercial truckers. While each had a different perspective, most supported the underlying intent of the proposal to improve public health and welfare, and some also supported the specific requirements as proposed. For those who objected to the proposal, the main thrust of their concerns related to the stringency and public health necessity of the new standards and the diesel fuel sulfur requirement. Largely in their written comments, these industries raised questions about the need for additional reductions in order to meet existing ozone and PM national ambient air quality standards and took exception with the Agency's characterization of diesel exhaust as a human carcinogen at environmental levels of exposure. Some industry commenters also challenged the Agency's reliance on public welfare and environmental effects such as visibility impairment and eutrophication of water bodies because the Agency had insufficiently quantified the benefits that would result from new standards on heavy-duty vehicles and diesel fuel.

The following subsections present the available information on the air pollution situation that is likely to exist without this rule for each ambient pollutant. We also present information on the improvement that is expected to result from this rule.

2. Ozone and Its Precursors

a. Health and Welfare Effects From Short-Term Exposures to Ozone

NO_X and VOC are precursors in the photochemical reaction which forms tropospheric ozone. A large body of evidence shows that ozone can cause harmful respiratory effects including chest pain, coughing, and shortness of breath, which affect people with compromised respiratory systems most severely. When inhaled, ozone can cause acute respiratory problems; aggravate asthma; cause significant temporary decreases in lung function of 15 to over 20 percent in some healthy adults; cause inflammation of lung tissue; produce changes in lung tissue and structure; may increase hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses. Children and outdoor workers are likely to be exposed to elevated ambient levels of ozone during exercise and, therefore, are at greater risk of experiencing adverse health effects. Beyond its human health effects, ozone has been shown to injure plants, which has the effect of reducing crop yields and reducing productivity in forest ecosystems.

There is strong and convincing evidence that exposure to ozone is associated with exacerbation of asthma-related symptoms. Increases in ozone concentrations in the air have been associated with increases in hospitalization for respiratory causes for individuals with asthma, worsening of symptoms, decrements in lung function and increased medication use. Studies have also indicated that exposure to particulate matter can be associated with altered lung function and increased respiratory symptoms, and asthmatic children are considered to be particularly sensitive to these effects. In addition, exposures to particulate matter or ozone have been shown to have a priming effect for responsiveness to allergens, with the pollutant exposure leading to heightened responses to allergens among allergic asthmatics. It is not believed, based on the current evidence, that exposure to outdoor pollutants such as ozone or particulate matter is a cause of asthma.

Asthma is one of the most common and costly diseases in the United States. According to the President's Task Force on Environmental Health Risks and Safety Risks to Children, America is in the midst of an asthma epidemic.[11]

[11] *Asthma and the Environment: A Strategy to Protect Children, President's Task Force on*

Since 1980, the number of asthma sufferers in the United States has more than doubled from 6.7 million to 17.3 million in 1998.[12] Today, more than 5 percent of the US population has asthma. On average, 15 people died every day from asthma in 1995, and the death rate has nearly tripled since 1975. In 1998, the cost of asthma to the U.S. economy was estimated to be $11.3 billion, with hospitalizations accounting for the single largest portion of the cost.[13] A recent report by the Pew Environmental Health Commission at Johns Hopkins School of Public Health estimates that by 2010, 22 million Americans will suffer from asthma, or one in 14 Americans and one in every five families.[14] At present, asthma cannot be cured, only controlled.

To address this growing public health problem, the President's Task Force on Environmental Health Risks and Safety Risks to Children ranked asthma as its highest priority. The President's Task Force created and charged the Asthma Priority Area Workgroup, co-chaired by EPA and the Department of Health and Human Services, with reviewing current Federal efforts to address the issue, and to make recommendations. In May, 2000, the Task Force issued a strategy that focused on developing a greater understanding of the role environmental factors associated with the onset of asthma; and triggers of asthma. The report found that ''children with asthma have long been recognized as particularly sensitive to outdoor air pollution,'' The report noted that ''25 percent of children in America live in areas that regularly exceed EPA limits for ozone.'' The first guiding principle was to focus efforts to ''eliminate the disproportionate impact of asthma in minority populations and those living in poverty.'' Testimony received during the Agency's five public hearings on this rule contained numerous references and detailed personal accounts as to the severe and sometimes fatal impact of asthma on the lives of American citizens.

Environmental Health Risks and Safety Risks to Children, January 28, 1999, Revised May, 2000.

[12] *Asthma Prevention Program of the National Center for Environmental Health,* Centers for Disease Control and Prevention, ''At-A-Glance, 1999; Centers for Disease Control and Prevention, CDC, *Surveillance for Asthma—United States, 1960–1995,*'' MMWR 47 (No. SS-1) (April 1998).

[13] Asthma Statistics, National Institutes of Health, National, Heart, Lung, and Blood Institute, January, 1999.

[14] *Attack Asthma: Why America Needs A Public Health Defense System to Battle Environmental Threats,* Pew Environmental Health Commissions at the Johns Hopkins School of Public Health, June, 2000.

b. Current and Future Nonattainment Status With the 1-Hour Ozone NAAQS

Today, ground level ozone remains a pervasive pollution problem in the United States. As of July, 2000, 102 million people (1999 census) lived in 31 metropolitan areas designated nonattainment under the 1-hour ozone NAAQS.[15] This is a sharp decline from the 101 nonattainment areas originally identified under the Clean Air Act Amendments of 1990, but elevated ozone concentrations remain a serious public health concern throughout the nation.

Over the last decade, declines in ozone levels were found mostly in urban areas, where emissions are heavily influenced by controls on mobile sources and their fuels.[16] Twenty-three metropolitan areas have realized a decline in ozone levels since 1989, but at the same time, ozone levels in 11 metropolitan areas with 7 million people have increased.[17] Regionally, California and the Northeast have recorded significant reductions in peak ozone levels, while four other regions (the Mid-Atlantic, the Southeast, the Central and Pacific Northwest) have seen ozone levels increase.

The highest ambient concentrations are currently found in suburban areas, consistent with downwind transport of emissions from urban centers. Concentrations in rural areas have risen to the levels previously found only in cities. Over the last decade, ozone levels at 17 of our National Parks have increased, and in 1998, ozone levels in two parks were 30 to 40 percent higher than the ozone NAAQS.

i. Results of Photochemical Ozone Modeling and Analysis of Emissions Inventories

In conjunction with this rulemaking, the Agency performed ozone air quality modeling for nearly the entire Eastern U.S covering metropolitan areas from Texas to the Northeast.[18] This ozone air quality modeling was based upon the same modeling system as was used in the Tier 2 air quality analysis, with the addition of updated inventory estimates for 2007 and 2030.[19] This modeling supports the conclusion that there is a broad set of areas with predicted ozone concentrations in 2007 and 2030 at or above 0.125 ppm, in the baseline scenarios without additional emission reductions. EPA established the 1-hour standard at 0.12 parts per million (ppm) daily maximum 1-hour average concentration not to be exceeded more than once per year on average. Compliance with the 1-hour standard is judged on the basis of the most recent three years of ambient air quality monitoring data.

We have compared and supplemented our own ozone modeling with other modeling studies, submitted to us as state implementation plan (SIP) revisions, or brought to our attention through our consultations with states on SIP revisions that are in development. The ozone modeling in the SIP revisions has the advantage of using emission inventories that are more specific to the area being modeled, and of using meteorological conditions selected specifically for each area. Also, the SIP revisions included other evidence and analysis, such as analysis of air quality and emissions trends, observation-based models that make use of data on concentrations of ozone precursors, alternative rollback analyses, and information on the responsiveness of the air quality model. For some areas, we decided that the predictions of 1-hour ozone exceedances from our modeling were less reliable than conclusions that could be drawn from this additional evidence and analysis. For example, in some areas our episodes did not capture the meteorological conditions that have caused high ozone, while local modeling did so. Thus, these local analyses are considered to be more extensive than our own modeling for estimating whether there would be NAAQS nonattainment without further emission reductions, when interpreted by a weight of evidence method which meets our guidance for such modeling.

Photochemical ozone modeling conducted for this rulemaking was based in part on updated national emissions inventories for all sources. National emission trends for NO_X

[15] Memorandum to Air Docket, September 18, 2000. Information on ozone nonattainment areas and populations as of July 31, 2000 from US EPA website www.epa.gov/airs/nonattn.html, USA Air Quality Nonattainment Areas, Office of Air Quality Planning and Standards.

[16] National Emissions Trends database.

[17] National Air Quality and Emissions Trends Report, 1998, March, 2000, at 28.

[18] EPA also performed ozone air quality modeling for the western United States but, as described further in the air quality technical support document, model predictions were well below corresponding ambient concentrations. Because of poor model performance for this region of the country, the results of western ozone modeling were not relied on for this rule.

[19] Consistent with a commitment expressed in the proposal, the Agency released the emissions inventory inputs for, and a description of, ozone modeling into the public record (docket number A–99–06), and also onto a website developed expressly for this purpose, on a continuous basis as they were developed. Further discussion of this modeling, including evaluations of model performance relative to predicted future air quality, is provided in the air quality modeling Technical Support Document (TSD).

predict a significant decline from 1996 to 2007, a leveling off of the downward trend between 2007 to 2020, and an increase in NO_X inventories from 2020 to 2030. By 2030, national NO_X levels are estimated to reach levels that are within ten percent of 2007 levels. Predictions of national VOC emissions indicate a reduction from 1996 to 2007, followed by an increase between 2007 and 2030 resulting in 2030 levels that are estimated to be 10 percent greater than VOC emissions levels in 2007. In metropolitan ozone nonattainment areas, such as Charleston, Chicago and Houston, NO_X or VOC emissions in 2030 are predicted to reach or exceed 2007 levels. These estimated national and metropolitan area emissions inventories of ozone precursors are consistent with the conclusions reached by analysis of ozone modeling conducted for this rule that additional reductions are needed in order to enable areas to reach and maintain attainment of the ozone standard between 2007 and 2030.

The Agency conducted ozone modeling based on inventories developed with and without reductions from this rulemaking for three future years: 2007, 2020 and 2030. The year 2007 was chosen because it is also the first year of implementation for the new standards adopted in today's action. It is also the year that nine major urban areas with a history of persistent and elevated ozone concentrations must demonstrate attainment, and is also relevant to the South Coast Air Basin of California (South Coast) with an attainment date of 2010. In addition, modeling was performed for 2030 when the full benefits of the rule are expected to be realized and for 2020 which represents an intermediate year between the start of the program and full turnover of the affected vehicle fleet. The year 2020 is also representative of the period when areas that have come into attainment may need additional reductions in order to maintain the standard.

Today's rule will provide a substantial reduction in emissions of ozone precursors, particularly NO_X. These emissions reductions will greatly lower ozone concentrations which will help federal and State efforts to bring about attainment of the current 1-hour ozone standard. As described in the Air Quality Modeling Technical Support Document for this rule, EPA performed regional scale ozone modeling for the Eastern U.S. to assess the impacts of the controls in this rule on predicted 1-hour ozone exceedances. The results of this modeling were examined for those 37 areas in the East for which EPA's modeling predicted exceedances in 2007, 2020 and/or 2030 and current 1-hour design values are above the standard or within 10 percent of the standard. The results for these areas combined indicate that there will be substantial reductions in the number of exceedances and the magnitude of high ozone concentrations in both 2020 and 2030 due to this rule. The modeling also indicates that without the rule, exceedances would otherwise increase by 37 percent between 2020 and 2030 as growth in emissions offsets the reductions from Tier 2 and other current control programs.

For all areas combined, the rule is forecast to provide a 33 percent reduction in exceedances in 2020 and a 38 percent reduction in 2030. The total amount of ozone above the standard is expected to decline by nearly 37 percent in 2020 and 44 percent in 2030. Also, daily maximum ozone exceedances are lowered by 5 ppb on average in 2020 and nearly 7 ppb in 2030. The modeling forecasts an overall net reduction of 39 percent in exceedances from 2007, which is close to the start of this program, to 2030 when controls will be fully in place. In addition, the results for each individual area indicates that all areas are expected to have fewer exceedances in 2030 with the HDV controls than without this rule.

During the public comment period on the proposed rule, EPA received several comments that expressed concern about potential increases in ozone that might result from this rule. As indicated above, the air quality modeling results indicate an overall reduction in ozone levels in 2007 and 2030 during the various episodes modeled. Examining individual areas, nearly the entire country is projected to benefit substantially from the reductions in this rule.[20] There is a metropolitan area that EPA modeled as having exceedances with the one-hour ozone standard under baseline conditions in 2007 through 2030, which the Agency's modeling for the HDV rule estimated could have less than a 3 percent increase in its peak ozone levels in 2020 and 2030 and small net increase (i.e., less than 1 ppb) in levels above the 1-hour standard in 2030. However, EPA's air quality modeling did not predict an increase in the number of exceedances in this CMSA/MSA in 2020 and a decrease in exceedances occurred in 2030. In another CMSA/MSA in another State, in 2030 there was less than a one percent increase in the summer peak level. Yet, this area had fewer exceedances and lower ozone above the 1-hour standard in both 2020 and 2030 under the rule. EPA expects that the States will have State Implementation Plans that will consider federal controls and complement them with State actions to provide attainment and will work with the States to ensure this occurs.

Considering all of EPA's air quality modeling results, it is clear that the significant ozone reductions from this rule outweigh the limited ozone increases that may occur in the future assuming no additional reductions from federal or local controls. Additional details on this are provided in the Response to Comments document and in EPA's Heavy Duty Rule Air Quality Modeling Technical Support Document. Furthermore, EPA's Regulatory Impact Analysis for this rule shows significant health and welfare benefits occurring from the ozone reductions that the rule provides (see details on the benefits in Section V.F.5 of the preamble and Chapter VII of the RIA).

ii. Areas At Risk of Exceeding the 1-Hour Ozone Standard in the Future

This section presents the Agency's conclusions about the risk of future nonattainment for 45 areas listed in Table II.B–1 based on photochemical ozone modeling conducted for this rule and other evidence such as local air quality modeling.[21] The areas listed in Table II.B–1 are separated into two broad groups: (1) Those areas with attainment dates in 2007 or 2010 that will benefit from reductions from this rule to attain and maintain the standard; and (2) those areas with attainment dates prior to 2007 that will benefit from reductions from this rule to maintain the standard after their attainment dates. Because ozone concentrations causing violations of the 1-hour ozone standard are well established to endanger public health and welfare, this indicates that it is appropriate for the Agency to set new standards for heavy-duty vehicles. The following discussion follows these groupings from top to bottom. A more detailed discussion is found in the Regulatory Impact Analysis (RIA).

Ten metropolitan areas contained within designated ozone nonattainment areas have statutorily-defined attainment dates of 2007 or 2010, or

[20] The air quality modeling was performed for the Eastern region of the United States, but EPA also expects the rule to benefit nonattainment areas throughout the entire nation, including California.

[21] In the proposal, we relied on photochemical ozone modeling performed for recently promulgated standards on light duty vehicles, or Tier 2. The results presented in this final rulemaking for heavy-duty vehicles and diesel fuel are largely consistent with the findings presented in the proposal, with small differences due to updated emissions inventories. As stated in the proposal, the ozone modeling methodologies used in the proposal and presented here in the final rule are identical.

have requested attainment date extensions to 2007. These 10 areas are listed at the top of Table II.B–1, and are New York City, Houston, Hartford, New London, Chicago, Milwaukee, Dallas, Beaumont-Port Arthur, Los Angeles, and Southeast Desert.

Each of these areas needs additional emission reductions in order to reach attainment by 2007, and to maintain the standards in the future. Some of these areas have emission reduction shortfalls that are identified in their attainment demonstrations (*i.e.,* South Coast Air Basin, New York and Houston), and reductions from this rule will assist State efforts to reach attainment.[22] Three other areas—Southeast Desert, Hartford, New London—are subject to ozone transport from upwind areas with identified shortfalls (South Coast and New York), and depend upon attainment from these upwind areas to reach attainment themselves. We have received attainment plans for two areas in Texas (Dallas and Beaumont-Port Arthur), and the Agency is likely to consider the reductions from this rule in its proposed approval of these attainment plans in **Federal Register** notices. Finally, there are two areas in the Midwest—Chicago and Milwaukee—that have incorporated reductions from this rule into their regional ozone modeling, and plan to rely on reductions from this rule to support their 2007 attainment demonstration.[23]

For all ten areas, even if all shortfalls were filled by the States, there is some risk that at least some of the areas will not attain the standards by their attainment dates of 2007, or 2010 for Los Angeles. In that event, the reductions associated with this program, which increase substantially after 2007, will help assure that any residual failures to attain are remedied. Finally, there is also some risk that the areas will be unable to maintain attainment after 2007. Considered collectively, there is a significant risk that some areas will not be in attainment throughout the period when the new standards will reduce heavy-duty vehicle emissions.

The rest of the areas have required attainment dates prior to 2007, or have no attainment date but are subject to a general obligation to have a SIP that provides for attainment and maintenance. These 34 areas, according to our modeling, are at risk of exceeding the ozone NAAQS between 2007 and 2030. These areas will be able to rely on reductions from this rule to continue to maintain the standard after attainment is reached, and will be able to take credit for this program in their maintenance plans when they seek redesignation to attainment of the ozone standard. If any of these areas reach attainment, and then fall back into nonattainment, or fail to reach attainment by 2007, reductions from this rule will assist these areas in achieving the ozone standard. If an area does not choose to seek redesignation, the continuing reductions from this rulemaking will help ensure maintenance (*i.e.,* prevent future exceedances) with the 1-hour standard after initial attainment is reached.

Areas with attainment dates prior to 2007 are presented in two groupings in the table at the end of this section: a group of 20 areas in the middle of Table II.B–1, and a group of 15 areas at the bottom of Table II.B–1. For the middle group of 20 areas, EPA and the States are pursuing the established statutory processes for attaining and maintaining the ozone standard, or have already redesignated these areas to attainment with a maintenance plan (*e.g.,* Cincinnati). EPA has re-instated the 1-hour ozone standard to some of these areas, restoring the applicability of these processes to them. The Agency believes that there is a significant risk that future air quality in a number of these areas will exceed the ozone standard at some time in the 2007 and later period. This belief is based on three factors: (1) Recent exceedances in 1997–1999, (2) predicted exceedances in 2007, 2020 or 2030 after accounting for existing mobile source requirements and other local or regional controls currently in place or required, and (3) our assessment of the magnitude of recent violations, the year-to-year variability of meteorological conditions conducive to ozone formation, transport from areas with later attainment dates, and other variables inherent in predicting future attainment such as the potential for some areas to experience unexpectedly high economic growth rates, growth in vehicle miles traveled, varying population growth from area to area, and differences in vehicle choice.

Only a subset of these 20 areas have yet adopted specific control measures that have allowed the Agency to fully approve an attainment plan. For some of these areas, we have proposed a finding, based on all the available evidence, that the area will attain by its applicable attainment date. We have approved a 10-year maintenance plan for Cincinnati, OH from 1999 to 2009. However, in many cases, these proposals depend on the State adopting additional emission reduction measures. The RIA provides more information on our recent proposals on attainment demonstrations and maintenance plans.[24] Until the SIPs for these areas are actually submitted, reviewed and approved by EPA, there is some risk that these areas will not adopt fully approvable SIPs.

Finally, there are 15 additional metropolitan areas for which the available ozone modeling and other evidence is less clear regarding the need for additional reductions (see Table II.B–1). Our ozone modeling predicted these areas to need further reductions to avoid exceedances in 2007, 2020 or 2030. The recent air quality monitoring data for these areas shows ozone levels with less than a 10 percent margin below the NAAQS. We believe there is a risk that future ozone levels will be above the NAAQS because of the year-to-year variability of meteorological conditions conducive to ozone formation, or because local emissions inventories may increase faster than national inventories.

iii. Conclusion

In sum, without these reductions, there is a significant risk that an appreciable number of the 45 areas, with a population of 128 million people in 1999, will violate the 1-hour ozone standard during the time period when these standards will apply to heavy-duty vehicles. The evidence summarized in this section, and presented in more detail in the air quality modeling TSD and the RIA, supports the Agency's belief that emissions of NO_X and VOC from heavy-duty vehicles in 2007 and later will contribute to a national ozone air pollution problem that warrants regulatory action under section 202(a)(3) of the Act.

[22] The South Coast's ''additional measures'' which rely on new technologies, are located in its 1994 SIP.

[23] Technical Support Document, Midwest Subregional Modeling: 1-Hour Attainment Demonstration for Lake Michigan Area and Emissions Inventory, Illinois Environmental Protection Agency, Indiana Department of Environmental Management, Michigan Department of Environmental Quality, Wisconsin Department of Natural Resources, September 27, 2000, at 14 and at 8.

[24] We have recently proposed favorable action, in some cases with a condition that more emission reductions be obtained, on attainment demonstrations in these areas with attainment dates prior to 2007: Philadelphia, Washington-Baltimore, Atlanta, and St. Louis.

TABLE II.B–1 [a]

[Areas and 1999 Populations at Risk of Exceeding the Ozone Standard between 2007 and 2030]

MSA/CMSA/State	1999 Population (in millions)
Areas with 2007/2010 Attainment Dates (Established or Requested)	
Beaumont-Port Arthur, TX	0.4
Chicago-Gary-Kenosha, IL–IN–WI	8.9
Dallas-Fort Worth, TX	4.9
Hartford, CT	1.1
Houston-Galveston-Brazoria, TX	4.5
Los Angeles-Riverside-Orange County, CA	16.0
Milwaukee-Racine, WI	1.6
New London-Norwich, CT–RI	0.3
New York-Northern New Jersey-Long Island, NY–NJ–CT–PA	20.2
Southeast Desert, CA	0.5
10 areas	58.4
Areas with Pre-2007 Attainment Dates or No Specific Attainment Date, with a Recent History of Nonattainment.	
Atlanta, GA	3.9
Baton Rouge, LA	0.6
Birmingham, AL	0.9
Boston-Worcester-Lawrence, MA–HN–ME–CT	5.7
Charlotte-Gastonia-Rock Hill, NC–SC	1.4
Detroit-Ann Arbor-Flint, MI MSA	5.5
Huntington-Ashland, WV–KY–OH	0.3
Louisville, KY–IN	1.0
Macon, GA MSA	0.3
Memphis, TN–AR–MS	1.1
Nashville, TN	1.2
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD	6
Richmond-Petersburg, VA	1
Sacramento-Yolo, CA	1.7
San Diego, CA	2.8
San Francisco-Oakland-San Jose, CA	6.9
San Joaquin Valley, CA	3.2
St. Louis, MO–IL	2.6
Ventura County, CA	0.7
Washington, DC—Baltimore, DC, MD, VA MSA	7.4
20 Areas	54.2
Areas with Pre-2007 Attainment Dates and Recent Concentrations within 10 percent of an Exceedance.	
Barnstable-Yarmouth, MA	0.2
Benton Harbor, MI	0.2
Biloxi-Gulfport-Pascagoula, MS MSA	0.4
Charleston, WV MSA	0.3
Cincinnati-Hamilton, OH–KY–IN	2.0
Cleveland-Akron, OH CMSA	2.9
Grand Rapids-Muskegon-Holland, MI MSA	1.1
Houma, LA	0.2
Lake Charles, LA	0.2
New Orleans, LA MSA	1.3
Norfolk-Virginia Beach-Newport News, VA–NC MSA	1.6
Orlando, FL MSA	1.5
Pensacola, FL MSA	0.4
Providence-Fall River-Warwick, RI–MA	1.1
Tampa-St. Petersburg-Clearwater, FL MSA	2.3
15 areas	15.7
Total Areas: 45	Population: 128

[a] In order to determine the reliability of model predictions the Agency ran the ozone model for current ozone concentrations and compared those predictions with actual ozone levels recorded by ozone monitors. The results of the model's performance are presented in the RIA for this rule.

c. Public Health and Welfare Concerns from Prolonged and Repeated Exposures to Ozone

A large body of scientific literature regarding health and welfare effects of ozone has associated health effects with certain patterns of ozone exposures that do not necessarily include any hourly ozone concentration above the 0.12 parts per million (ppm) level of the 1-hour NAAQS. The science indicates that there are health effects attributable to prolonged and repeated exposures to lower ozone concentrations. Studies of 6 to 8 hour exposures showed health effects from prolonged and repeated exposures at moderate levels of exertion to ozone concentrations as low as 0.08 ppm. Prolonged and repeated ozone concentrations at these levels are common in areas throughout the country, and are found in areas that are exceeding, and areas that are not exceeding, the 1-hour ozone standard. For example, 153 million people, or 87 percent of the total population in counties evaluated (176 million), lived in areas with 2 or more days with concentrations of 0.09 ppm or higher in 1998, including areas currently violating the 1-hour NAAQS. In the 2007, before the application of emission reductions resulting from this rule, we estimated that 116 million, or 93 percent of the total population considered in the analysis, are predicted to live in areas with at least 2 days with model-adjusted 8-hour average concentrations of 0.08 ppm or higher. By 2030, the number of people (139 million) and the relative percentage (91 percent) of the total population considered in the analysis is projected to grow significantly without reductions from this rule. Since prolonged exposures at moderate levels of ozone are more widespread than exceedances of the 1-hour ozone standard, and given the continuing nature of the 1-hour ozone problem described above, adverse health effects from this type of ozone exposure can reasonably be anticipated to occur in the future in the absence of this rule. Adverse welfare effects can also be anticipated, primarily from damage to vegetation. See the RIA for further details.

Studies of acute health effects have shown transient pulmonary function responses, transient respiratory symptoms, effects on exercise performance, increased airway responsiveness, increased susceptibility to respiratory infection, increased hospital and emergency room visits, and transient pulmonary respiratory inflammation. Such acute health effects have been observed following prolonged exposures at moderate levels of exertion at concentrations of ozone well below the current standard of 0.12 ppm. The effects are more pronounced at concentrations above 0.09 ppm, affecting more subjects or having a greater effect on a given subject in terms of functional changes or symptoms. A more detailed discussion may be found in the RIA.

With regard to chronic health effects, the collective data have many ambiguities, but provide suggestive evidence of chronic effects in humans. There is a biologically plausible basis for considering the possibility that repeated inflammation associated with exposure to ozone over a lifetime, as can occur with prolonged exposure to moderate ozone levels below peak levels, may result in sufficient damage to respiratory tissue that individuals later in life may experience a reduced quality of life, although such relationships remain highly uncertain.

Ozone has many welfare effects, with damage to plants being of most concern. Plant damage affects crop yields, forestry production, and ornamentals. The adverse effect of ozone on forests and other natural vegetation can in turn cause damage to associated ecosystems, with additional resulting economic losses, as well as aesthetic impacts which may not be fully quantifiable in economic terms. Ozone concentrations of 0.10 ppm can be phytotoxic to a large number of plant species, and can produce acute injury and reduced crop yield and biomass production. Ozone concentrations at or below 0.10 ppm have the potential over a longer duration of creating chronic stress on vegetation that can result in reduced plant growth and yield, shifts in competitive advantages in mixed populations, decreased vigor, and injury from other environmental stresses.

Section 202(a) provides EPA with authority to promulgate standards applicable to motor vehicle emissions that ''in the Administrator's judgment, cause or contribute to air pollution reasonably anticipated to endanger public health and welfare.'' The evidence in the RIA regarding the occurrence of adverse health effects due to prolonged and repeated exposure to ozone concentrations in the range discussed above, and regarding the populations that are expected to receive exposures at these levels, along with the welfare effects described above, supports a conclusion that emissions of NO_X and VOC from heavy-duty vehicles in 2007 and later will be contributing to a national air pollution problem that warrants regulatory action under section 202(a) of the Act.

3. Particulate Matter

a. Health and Welfare Effects

Particulate matter (PM) represents a broad class of chemically and physically diverse substances. It can be principally characterized as discrete particles that exist in the condensed (liquid or solid) phase spanning several orders of magnitude in size. All particles equal to and less than 10 microns are called PM_{10}. Fine particles can be generally defined as those particles with an aerodynamic diameter of 2.5 microns or less (also known as $PM_{2.5}$), and coarse fraction particles are those particles with an aerodynamic diameter greater than 2.5 microns, but equal to or less than a nominal 10 microns. The health and environmental effects of PM are strongly related to the size of the particles.

The emission sources, formation processes, chemical composition, atmospheric residence times, transport distances and other parameters of fine and coarse particles are distinct. Fine particles are directly emitted from combustion sources and are formed secondarily from gaseous precursors such as sulfur dioxide, nitrogen oxides, or organic compounds. Fine particles are generally composed of sulfate, nitrate, chloride and ammonium compounds; organic and elemental carbon; and metals. Combustion of coal, oil, diesel, gasoline, and wood, as well as high temperature process sources such as smelters and steel mills, produce emissions that contribute to fine particle formation. In contrast, coarse particles are typically mechanically generated by crushing or grinding and are often dominated by resuspended dusts and crustal material from paved or unpaved roads or from construction, farming, and mining activities. Fine particles can remain in the atmosphere for days to weeks and travel through the atmosphere hundreds to thousands of kilometers, while coarse particles deposit to the earth within minutes to hours and within tens of kilometers from the emission source.

Diesel particles are a component of both coarse and fine PM, but fall mostly in the fine and ultrafine size range.[25] Diesel PM contains small quantities of numerous mutagenic and carcinogenic compounds. While representing a very small portion (less than one percent) of the national emissions of metals, and a small portion of diesel particulate matter (one to five percent), we note that several toxic trace metals of potential

[25] Fine particulate matter includes particles with a diameter less than 2.5 micrometers. Ultrafine particulate matter include particles with a diameter less than 100 nanometers.

toxicological significance are also emitted by diesel engines including chromium, manganese, mercury and nickel. In addition, small amounts of dioxins have been measured in diesel exhaust, some of which may partition into the particle phase, though the impact of these emissions on human health is not clear.

Particulate matter, like ozone, has been linked to a range of serious respiratory health problems. Scientific studies suggest a likely causal role of ambient particulate matter (which is attributable to a number of sources including diesel) in contributing to a series of health effects. The key health effects categories associated with ambient particulate matter include premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency room visits, school absences, work loss days, and restricted activity days), aggravated asthma, acute respiratory symptoms, including aggravated coughing and difficult or painful breathing, chronic bronchitis, and decreased lung function that can be experienced as shortness of breath. Observable human noncancer health effects associated with exposure to diesel PM include some of the same health effects reported for ambient PM such as respiratory symptoms (cough, labored breathing, chest tightness, wheezing), and chronic respiratory disease (cough, phlegm, chronic bronchitis and suggestive evidence for decreases in pulmonary function). Symptoms of immunological effects such as wheezing and increased allergenicity are also seen. Studies in rodents, especially rats, show the potential for human inflammatory effects in the lung and consequential lung tissue damage from chronic diesel exhaust inhalation exposure. Both fine and coarse particles can accumulate in the respiratory system. Exposure to fine particles is most closely associated with such health effects as premature mortality or hospital admissions for cardiopulmonary disease. For additional information on health effects, see the RIA. PM also causes damage to materials and soiling of commonly used building materials and culturally important items such as statutes and works of art. It is a major cause of substantial visibility impairment in many parts of the U.S.

Heavy-duty vehicles contribute to particle formation through a number of pollutants. The contribution to PM fine varies by region of the country. Sulfate plays a major role in the composition of fine particulate across the country, but typically makes up over half the fine particles found in the Eastern United States. Organic carbon accounts for a large portion of fine particle mass, with a slightly higher fraction in the west. Diesel engines are the principal source of elemental carbon, which makes up about 5–6 percent of particle mass. Nationally, nitrate plays a relatively small role in the make up of fine particles, but ammonium nitrate plays a far larger role in southern California. Ammonium nitrate–formed secondarily from NO_X and ammonia emissions—is one of the most significant components of particulate matter pollution in California. During some of the worst episodes of elevated particle levels in the South Coast, ammonium nitrate can account for about 65–75 percent of the $PM_{2.5}$ mass. Reducing ammonium nitrate through controls on NO_X sources is a critical part of California's particulate matter strategy. Nationally, the standards finalized in this rule will significantly reduce HDV emissions of SO_X, NO_X, VOCs and elemental carbon, and thus contribute to reductions in ambient concentrations of PM_{10} and $PM_{2.5}$.

b. Attainment and Maintenance of the PM_{10} NAAQS

Under the CAA, we are to regulate HDV emissions if they contribute to air pollution that can reasonably be anticipated to endanger public health and welfare. We have already addressed the question of what concentration patterns of PM endanger public health, in setting the NAAQS for PM_{10} in 1987. The PM NAAQS were revised in 1997, largely by adding new standards for fine particles ($PM_{2.5}$) and modifying the form of the daily PM_{10} standard. On judicial review, the revised standards were remanded for further proceedings, and the revised PM_{10} standards were vacated. The Supreme Court is currently reviewing that decision. Oral arguments were held on November 7, 2000 and a decision by the Court is expected in 2001. Pending final resolution of the litigation, the 1987 PM_{10} standard is the applicable NAAQS for PM_{10}.

Commenters questioned the need for additional PM_{10} reductions in order to achieve attainment with the PM_{10} NAAQS, and questioned the Agency's statement that, unlike ozone, PM_{10} emissions are projected to increase in the future. Commenters are correct that significant progress has occurred over the last decade,[26] but the Agency's statement was based on projected PM_{10} inventory increases in the future between 1996 and 2030. During this period, inventory trends for current PM_{10} nonattainment areas, or those with concentrations within 10 percent of the standard, are predicted to increase significantly. For example, from 1996 to 2030, increases are predicted in Clark County (Las Vegas) of 41 percent, Harris County (Houston) of 37 percent, and Phoenix of 24 percent. A more detailed discussion is provided in the RIA.

i. Current PM_{10} Nonattainment

The most recent PM_{10} monitoring data indicates that 14 designated PM_{10} nonattainment areas with a projected population of 23 million violated the PM_{10} NAAQS in the period 1997–1999. Table II.B–3 lists the 14 areas, and also indicates the PM_{10} nonattainment classification and 1999 projected population for each PM_{10} nonattainment area. The projected population in 1999 was based on 1990 population figures which were then increased by the amount of population growth in the relevant county from 1990 to 1999.

TABLE II.B–3.—PM_{10} NONATTAINMENT AREAS VIOLATING THE PM_{10} NAAQS IN 1997–99

Area	Classification	1999 Population (projected, in millions)
Hayden/Miami, AZ	Moderate	0.004
Phoenix, AZ	Serious	2.977
Nogales, AZ	Moderate	0.025
San Joaquin Valley, CA	Serious	3.214
Imperial Valley, CA	Moderate	0.122

[26] Ambient concentrations of PM_{10} and PM_{10} emissions have declined over the last ten years by 25 percent and 19 percent, respectively. National Air Quality and Emissions Trends Report, 1998, US EPA, March, 2000.

TABLE II.B–3.—PM_{10} NONATTAINMENT AREAS VIOLATING THE PM_{10} NAAQS IN 1997–99—Continued

Area	Classification	1999 Population (projected, in millions)
Owens Valley, CA	Serious	0.018
Searles Valley, CA	Moderate	0.029
Coachella Valley, CA	Serious	0.239
South Coast Air Basin	Serious	14.352
Las Vegas, NV	Serious	1.200
Reno, NV	Moderate	0.320
Anthony, NM [b]	Moderate	0.003
El Paso, TX [a]	Moderate	0.611
Wallula, WA [b]	Moderate	0.052
Total Areas: 14		23.167

[a] EPA has determined that continuing PM_{10} nonattainment in El Paso, TX is attributable to international transport under section 179(B).
[b] The violation in this area has been determined to be attributable to natural events under section 188(f) of the Act.

In addition to the 14 PM_{10} nonattainment areas that are currently violating the PM_{10} NAAQS, there are 25 unclassifiable areas that have recently recorded ambient concentrations of PM_{10} above the PM_{10} NAAQS. EPA adopted a policy in 1996 that allows areas with PM_{10} exceedances that are attributable to natural events to retain their designation as unclassifiable if the State is taking all reasonable measures to safeguard public health regardless of the sources of PM_{10} emissions. Areas that remain unclassifiable areas are not required under the Clean Air Act to submit attainment plans, but we work with each of these areas to understand the nature of the PM_{10} problem and to determine what best can be done to reduce it. With respect to the monitored violations reported in 1997–99 in the 25 areas designated as unclassifiable, we have not yet excluded the possibility that factors such as a one-time monitoring upset or natural events, which ordinarily would not result in an area being designated as nonattainment for PM_{10}, may be responsible for the problem. Emission reductions from today's action will assist these currently unclassifiable areas to achieve ambient PM_{10} concentrations below the current PM_{10} NAAQS.

ii. Risk of Future Exceedances of the PM_{10} Standard

The new standards for heavy-duty vehicles will benefit public health and welfare through reductions in direct diesel particles and NO_X, VOCs, and SO_X which contribute to secondary formation of particulate matter. Because ambient particle concentrations causing violations of the PM_{10} standard are well established to endanger public health and welfare, this information supports the new standards for heavy-duty vehicles. The reductions from today's rule will assist States as they work with the Agency through implementation of local controls including development and adoption of additional controls as needed to move their areas into attainment by the applicable deadline, and maintain the standards thereafter.

The Agency's PM inventory analysis performed for this rulemaking predicts that without additional reductions 10 areas face a significant risk of failing to meet or to maintain the PM_{10} NAAQS even with federal, State and local controls currently in place.[27] Table II.B–4 presents information about these 10 areas and subdivides them into two groups. The first group of 6 areas are designated PM_{10} nonattainment areas which had recent monitored violations of the PM_{10} NAAQS in 1997–1999 and increasing inventories of PM_{10} from 2007 to 2030 (see Table II.B–3 for predicted increases in emissions). These areas have a population of 19 million. Included in the group are the nonattainment areas that are part of the Los Angeles, Phoenix and Las Vegas (Clark County) metropolitan areas, where traffic from heavy-duty vehicles is substantial. These six areas will benefit from the reductions in emissions that will occur from the new standards for heavy-duty vehicles, as will other areas impacted by heavy-duty vehicle emissions.

The second group of four counties listed in Table II.B–4 with a total of nine million people in 1999 also had predicted exceedances of the PM_{10} standard. While these four areas registered, in either 1997 or 1998, single-year annual average monitored PM_{10} levels of at least 90 percent of the PM_{10} NAAQS, these areas did not exceed the formal definition of the PM_{10} NAAQS over the three-year period ending in 1999. For each of these four areas (i.e., Cuyahoga, Harris, New York, and San Diego), inventories of total PM_{10} are predicted to increase between 1996, when these areas recorded values within 10 percent of the PM_{10} standard, and 2030 when this rule will take full effect. Additionally, EPA is in the process of taking final action on a request by the State of Ohio to redesignate Cuyahoga County as attainment. This action is based on locally developed information and is consistent with the requirements of the CAA which include, among other requirements a 10-year plan for maintenance of the PM_{10} standard.

For some of these areas, total PM_{10} inventories are predicted to decline or stay relatively constant from 1996 to 2007, and then increase after 2007. Based on inventory projections, the small margin of attainment which the four areas currently enjoy will likely erode between 1996 and 2030, and for some areas before 2007, if additional actions to reduce the growth of future emissions are not taken. We therefore consider these four areas to each individually have a significant risk of exceeding the PM_{10} standard between 2007 and 2030 without further emission reductions. The emission reductions from the new standards for heavy-duty vehicles will help these areas attain and maintain the PM_{10} NAAQS in conjunction with other processes that

[27] EPA has evaluated projected emissions for this analysis rather than future air quality because REMSAD, the model EPA has used for analyses related to this rule, was designed principally to estimate long-term average concentrations of fine particulate matter and its ability to predict short-term PM_{10} concentrations has not been satisfactorily demonstrated. In contrast with ozone, which is the product of complex photochemical reactions and therefore difficult to directly relate to precursor emissions, ambient PM_{10} concentrations are more heavily influenced by direct emissions of particulate matter and can therefore be correlated more meaningfully with emissions inventories.

are currently moving these areas towards attainment.

TABLE II.B–4—AREAS WITH SIGNIFICANT RISK OF EXCEEDING THE PM_{10} NAAQS WITHOUT FURTHER EMISSION REDUCTIONS BETWEEN 2007 AND 2030

Area	Percent increases in PM_{10} emissions (1996–2030)	1999 Population (projected) (millions)
Areas currently exceeding the PM_{10} standard:		
Clark Co., NV (Las Vegas)	41	1.217
El Paso, TX [a]	14	0.611
Hayden/Miami, AZ	4	0.004
Los Angeles South Coast Air Basin, CA	14	14.352
Nogales, AZ	3	0.025
Phoenix, AZ	24	3.012
Subtotal for 6 Areas	.....	19.22
Areas within 10% of exceeding the PM_{10} standard:		
Cuyahoga Co., OH (Cleveland)	28	1.37
Harris, Co., TX (Houston)	37	3.26
New York Co., NY	14	1.55
San Diego Co., CA	13	2.83
Subtotal for 4 Areas	.....	9.01
10 Areas	.....	28.23

[a] EPA has determined that PM_{10} nonattainment in this area is attributable to international transport. While reductions in heavy-duty vehicle emissions cannot be expected to result in attainment, they will help reduce the degree of PM_{10} nonattainment.

EPA recognizes that the SIP process is ongoing and that nonattainment areas are in the process of implementing, or will be adopting and implementing, additional control measures to achieve the PM_{10} NAAQS in accordance with their attainment dates under the Clean Air Act. EPA believes, however, that as in the case of ozone, there are uncertainties inherent in any demonstration of attainment that is premised on forecasts of emission levels in future years. Even if these areas adopt and submit SIPs that EPA is able to approve as demonstrating attainment of the PM_{10} standard, and attain the standard by the appropriate attainment dates, the inventory analysis conducted for this rule and the history of PM_{10} levels in these areas indicates that there is still a significant risk that these areas will need the reductions from the heavy-duty vehicle standards adopted today to maintain the PM_{10} standards in the long term (ie, between 2007 and 2030). In addition, this list does not fully consider the possibility that there are other areas which are now meeting the PM_{10} NAAQS that have at least a significant probability of requiring further reductions to continue to maintain it.

c. Public Health and Welfare Concerns From Exposure to Fine PM

Many epidemiologic studies have shown statistically significant associations of ambient PM levels with a variety of human health endpoints in sensitive populations, including mortality, hospital admissions and emergency room visits, respiratory illness and symptoms measured in community surveys, and physiologic changes in mechanical pulmonary function. These effects have been observed in many areas with ambient PM levels at or below the current PM_{10} NAAQS. The epidemiologic science points to fine PM as being more strongly associated with some health effects, such as premature mortality, than coarse PM.

Associations of both short-term and long-term PM exposure with most of the above health endpoints have been consistently observed. The general internal consistency of the epidemiologic data base and available findings have led to increasing public health concern, due to the severity of several studied endpoints and the frequent demonstration of associations of health and physiologic effects with ambient PM levels at or below the current PM_{10} NAAQS. The weight of epidemiologic evidence suggests that ambient PM exposure has affected the public health of U.S. populations. Specifically, increased mortality associated with fine PM was observed in cities with longer-term average fine PM concentrations in the range of 16 to 21 $\mu g/m^3$.

Current 1999 $PM_{2.5}$ monitored values, which cover about a third of the nation's counties, indicate that at least 40 million people live in areas where long term ambient fine particulate matter levels are at or above 16 $\mu g/m^3$ (37 percent of the population in the areas with monitors), which is the low end of the range of long term average $PM_{2.5}$ concentrations in cities where statistically significant associations were found with serious health effects, including premature mortality (EPA, 1996).[28]

The Agency used the Regulatory Model System for Aerosols and Desposition (REMSAD) to model baseline and post-control ambient PM concentrations. For a description of the REMSAD model, the reader is referred to Chapter VII of the RIA.

Our REMSAD modeled predictions allow us to also estimate the affected population for the counties which do not currently have $PM_{2.5}$ monitors. According to our national modeled predictions, there were a total of 76

[28] EPA (1996) Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information OAQPS Staff Paper. EPA–452/R–96–013.

million people (1996 populations) living in areas with modeled annual average $PM_{2.5}$ concentrations at or above 16 μg/m^3 (29 percent of the population).[29]

The REMSAD model also allows us to estimate future $PM_{2.5}$ levels. However, the most appropriate method of making these projections relies on the model to predict changes between current and future states. Thus, we have estimated future conditions only for the areas with current $PM_{2.5}$ monitored data (which, as just noted, covers about a third of the nation's counties). For these counties, REMSAD predicts the current level of 37 percent of the population living in areas where fine PM levels are at or above 16 μg/m^3 to increase to 59 percent in 2030.

It is reasonable to anticipate that sensitive populations exposed to similar or higher levels, now and in the 2007 and later time frame, will also be at increased risk relative to the general population of premature mortality associated with exposures to fine PM. In addition, statistically significant relationships have also been observed in U.S. cities between PM levels and increased respiratory symptoms and decreased lung functions in children.

Since EPA's examination in the mid-1990s of the epidemiological and toxicological evidence of the health effects of PM, many new studies have been published that reevaluate or extend the initial research. The Agency is currently reviewing these new studies to stay abreast of the literature and adjust as necessary its assessment of PM's health effects. It is worth noting that within this new body of scientific literature, there are two new studies funded by the Health Effects Institute, a EPA-industry jointly funded group, that have generally confirmed the mid-1990s findings of the Agency about the association of fine particles and premature mortality and various other respiratory and cardiovascular effects. HEI's *National Morbidity, Mortality and Air Pollution Study* (NMMAPS), evaluated associations between air pollutants and mortality in 90 U.S. cities, and also evaluated associations between air pollutants and hospital admissions among the elderly in 14 U.S. cities.[30] In HEI's *Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality,* data were obtained from the original investigators for two previous studies.[31] [32], The extensive analyses included replication and validation of the previous findings, as well as sensitivity analyses using alternative analytic techniques, including different methods of covariate adjustment, exposure characterization, and exposure-response modeling.[33]

Section 202(a) provides EPA with independent authority to promulgate standards applicable to motor vehicle emissions that ''in the Administrator's judgment, cause or contribute to air pollution reasonably anticipated to endanger public health and welfare.'' The body of health evidence is supportive of our view that PM exposures are a serious public health concern. This concern exists for current exposures as well as exposures that can reasonably be anticipated to occur in the future. The risk is significant from an overall public health perspective because of the large number of individuals in sensitive populations that we expect to be exposed to ambient fine PM in the 2007 and later time frame, as well as the importance of the negative health effects. This information warrants a requirement to reduce emissions from heavy-duty vehicles, to address elevated levels of fine PM. This evidence supports EPA's conclusion that emissions from heavy-duty vehicles that lead to the formation of fine PM in 2007 and later will be contributing to a national air pollution problem that warrants action under section 202(a)(3).

d. Other Welfare Effects Associated with PM

The deposition of airborne particles reduces the aesthetic appeal of buildings, and promotes and accelerates the corrosion of metals, degrades paints, and deteriorates building materials such as concrete and limestone. This materials damage and soiling are related to the ambient levels of airborne particulates, which are emitted by heavy-duty vehicles. Although there was insufficient data to relate materials damage and soiling to specific concentrations, and thereby to allow the Agency to establish a secondary PM standard for these impacts, we believe that the welfare effects are real and that heavy-duty vehicle PM, NO_X, SO_X, and VOC contribute to materials damage and soiling.

e. Conclusions Regarding PM

There is a significant risk that, despite statutory requirements and EPA and State efforts towards attainment and maintenance, some areas of the U.S. will violate the PM_{10} NAAQS in 2007 and thereafter. Heavy-duty vehicles contribute substantially to PM_{10} levels, as shown in Section II.C below.

It is also reasonable to anticipate that concentrations of fine PM, as represented for example by $PM_{2.5}$ concentrations, will also endanger public health and welfare even if all areas attain and maintain the PM_{10} NAAQS. Heavy-duty vehicles contribute to this air pollution problem.

There are also important environmental impacts of PM_{10}, such as regional haze which impairs visibility. Furthermore, while the evidence on soiling and materials damage is limited and the magnitude of the impact of heavy-duty vehicles on these welfare effects is difficult to quantify, these welfare effects support our belief that this action is necessary and appropriate.

Finally, in addition to its contribution to PM inventories, diesel exhaust PM is of special concern because it has been implicated in an increased risk of lung cancer and respiratory disease in human studies, and an increased risk of noncancer health effects as well. The information provided in this section shows that there will be air pollution that warrants regulatory action under section 202(a)(3) of the Act.

4. Diesel Exhaust

Diesel emissions are of concern to the agency beyond their contribution to ambient PM. As discussed in detail in the draft RIA, there have been health studies specific to diesel exhaust emissions which indicate potential hazards to human health that appear to be specific to this emissions source. For chronic exposure, these hazards included respiratory system toxicity and carcinogenicity. Acute exposure also causes transient effects (a wide range of physiological symptoms stemming from irritation and inflammation mostly in the respiratory system) in humans though they are highly variable depending on individual human susceptibility. The chemical

[29] REMSAD modeling for $PM_{2.5}$ annual average concentrations. Total 1996 population in all REMSAD grid cells is 263 million.

[30] Samet JM, Zeger SL, Dominici F, Curriero F, Coursac I, Dockery DW, Schwartz J, Zanobetti A. 2000. The National Morbidity, Mortality and Air Pollution Study: Part II: Morbidity, Mortality and Air Pollution in the United States. Research Report No. 94, Part II. Health Effects Institute, Cambridge MA, June 2000.

[31] Dockery, D.W., Pope, C.A., III, Xu, X., Spengler, J.D., Ware, J.H., Fay, M.E., Ferris, B.G., Speizer, F.E. (1993) An association between air pollution and mortality in six U.S. cities. N. Engl. J. Med. 329:1753–1759.

[32] Pope, C. A., III, Thun, M. J., Namboodiri, M. M., Dockery, D. W., Evans, J. S., Speizer, F. E., Heath, C. W., Jr. (1995) Particulate air pollution as a predictor of mortality in a prospective study of U.S. adults. Am. J. Respir. Crit. Care Med. 151: 669–674.

[33] Krewski D, Burnett RT, Goldbert MS, Hoover K, Siemiatycki J, Jarrett M, Abrahamowicz M, White WH. (2000) Reanalysis of the Harvard Six Cities Study and the American Cancer Society Study of Particulate Air Pollution and Mortality. Special Report to the Health Effects Institute, Cambridge MA, July 2000.

composition of diesel exhaust includes several hazardous air pollutants, or air toxics. In our Mobile Source Air Toxic Rulemaking under section 202(l) of the Act discussed above, EPA determined that diesel particulate matter and diesel exhaust organic gases be identified as a Mobile Source Air Toxic (MSAT). The purpose of the MSAT list is to provide a screening tool that identifies compounds emitted from motor vehicles or their fuels for which further evaluation of emissions controls is appropriate. As discussed in chapter 3 on engine technology, the particulate matter standard finalized today reflects the greatest degree of emissions reductions achievable under section 202(l) for on-highway heavy-duty vehicle PM emissions.

a. Potential Cancer Effects of Diesel Exhaust

The EPA has concluded that diesel exhaust is likely to be carcinogenic to humans by inhalation at occupational and environmental levels of exposure.[34] The draft Health Assessment Document for Diesel Exhaust (draft Assessment), was reviewed in public session by the Clean Air Scientific Advisory Committee (CASAC) on October 12–13, 2000.[35] The CASAC found that the Agency's conclusion that diesel exhaust is likely to be carcinogenic to humans is scientifically sound. CASAC concurred with the draft Assessment's findings with the proviso that EPA provide modifications and clarifications on certain topics. The Agency expects to produce the finalized Assessment in early 2001. Information presented here is consistent with that to be provided in the final Assessment.

In its review of the published literature, EPA found that about 30 individual epidemiologic studies show increased lung cancer risk associated with diesel emissions. In the draft Assessment EPA evaluated 22 studies that were most relevant for risk assessment, 16 of which reported significant increased lung cancer risks, ranging from 20 to 167 percent, associated with diesel exhaust exposure. Published analytical results of pooling many of the 30 studies showed that on average, the risks were increased by 33 to 47 percent. Questions remain about the influence of other factors (e.g., effect of smoking, other particulate sources), the quality of the individual epidemiologic studies, exposure levels, and consequently the precise magnitude of the increased risk of lung cancer. From a weight of evidence perspective, EPA concludes that the epidemiologic evidence, as well as supporting data from certain animal and mode of action studies, support the Agency's conclusion that exposure to diesel exhaust is likely to pose a human lung cancer hazard to occupationally exposed individuals as well as to the general public exposed to typically lower environmental levels of diesel exhaust.

Risk assessments in the peer-reviewed literature have attempted to assess the lifetime risk of lung cancer in workers occupationally exposed to diesel exhaust. These estimates suggest that lung cancer risk may range from 10^{-4} to 10^{-2}.[36] [37] [38] The Agency recognizes the significant uncertainties in these studies, and has not used these estimates to assess the possible cancer unit risk associated with ambient exposure to diesel exhaust.

While available evidence supports EPA's conclusion that diesel exhaust is likely to be a human lung carcinogen, and thus is likely to pose a cancer hazard to humans, EPA has concluded that the available data are not sufficient to develop a confident estimate of cancer unit risk. The absence of a cancer unit risk for diesel exhaust limits our ability to quantify, with confidence, the potential impact of the hazard (magnitude of risk) on exposed populations. In the draft Assessment, EPA acknowledged this limitation and provided a discussion of the possible environmental cancer risk consistent with the majority of the occupational epidemiological findings of increased lung cancer risk and the exposure differences between the occupational and environmental settings.[39] The Agency concluded in developing its perspective on risk that there is a reasonable potential that environmental lifetime cancer risks (''environmental risk range'') from diesel exhaust may exceed 10^{-5} and could be as high as 10^{-3}.[40]

The environmental risk estimates included in the Agency's risk perspective are meant only to gauge the possible magnitude of risk to provide a means to understand the potential significance of the lung cancer hazard. The estimates are not to be construed as cancer unit risk estimates and are not suitable for use in analyses which would estimate possible lung cancer cases in exposed populations.

EPA recognizes that, as in all such risk assessments, there are uncertainties in this assessment of the environmental risk range including limitations in exposure data, uncertainty with respect to the most accurate characterization of the risk increases observed in the epidemiological studies, chemical changes in diesel exhaust over time, and extrapolation of the risk from occupational to ambient environmental exposures. As with any such risk assessment for a carcinogen, despite EPA's thorough examination of the available epidemiologic evidence and exposure information, at this time EPA can not rule out the possibility that the lower end of the risk range includes zero.[41] However, it is the Agency's best scientific judgement that the assumptions and other elements of this analysis are reasonable and appropriate for identifying the risk potential based on the scientific information currently available.

The Agency believes that the risk estimation techniques that were used in the draft Assessment to gauge the potential for and possible magnitude of risk are reasonable and the CASAC

[34] U.S. EPA (2000) Health Assessment Document for Diesel Exhaust: SAB Review Draft. EPA/600/8–90/057E Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/dieslexh.htm.

[35] EPA (2000) Review of EPA's Health Assessment Document for Diesel Exhaust (EPA 600/8–90/057E). Review by the Clean Air Scientific Advisory Committee (CASAC) December 2000. EPA–SAB–CASAC–01–003.

[36] California Environmental Protection Agency, Office of Health Hazard Assessment (CAL–EPA, OEHHA) (1998) Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant. Appendix III Part B Health Risk Assessment for Diesel Exhaust. April 22, 1998.

[37] Harris, J.E. (1983) Diesel emissions and Lung Cancer. Risk Anal. 3:83–100.

[38] Stayner, L.S., Dankovic, D., Smith, R., Steenland, K. (1998) Predicted Lung Cancer Risk Among Miners Exposed to Diesel Exhaust Particles. Am. J. of Indus. Medicine 34:207–219.

[39] See Chapter 8.4 and 9.5.2 of the U.S. EPA (2000) Health Assessment Document for Diesel Emissions: SAB Review Draft. EPA/600/8–90/057E Office of Research and Development, Washington, D.C. The document is available electronically at www.epa.gov/ncea/dieselexh.htm.

[40] As used in this rule, environmental risk is defined as the risk (i.e. a mathematical probability) that lung cancer would be observed in the population after a lifetime exposure to diesel exhaust. Exposure levels may be occupational lifetime or environmental lifetime exposures. An environmental risk in the magnitude of 10^{-5} translates as the probability of lung cancer being evidenced in one person in a population of one hundred thousand having a lifetime exposure.

[41] EPA's scientific judgment (which CASAC has supported) is that diesel exhaust is likely to be carcinogenic to humans. Notably, similar scientific judgements about the carcinogenicity of diesel exhaust have been recently made by the National Toxicology Program of the Department of Health and Human Services, NIOSH, WHO, and OEHA of the State of California. In the risk perspective discussed above, EPA recognizes the possibility that the lower end of the environmental risk range includes zero. The risks could be zero because (1) some individuals within the population may have a high tolerance level to exposure from diesel exhaust and therefore are not susceptible to the cancer risks from environmental exposure and (2) although EPA has not seen evidence of this, there could be a threshold of exposure below which there is no cancer risk.

panel has concurred with the Assessment's discussion of the possible environmental risk range with an understanding that some clarifications and caveats would be added to the final version of the Assessment. Details of the technical approach used in estimating the possible range of environmental risks and uncertainties are provided in the RIA.

In the draft Assessment, the Agency also provided a discussion of the potential overlap and/or relatively small difference between some occupational settings where increased lung cancer risk is reported and ambient environmental exposures. The potential for small exposure differences underscores the concern that some degree of occupational risk may also be present in the environmental setting and that extrapolation of occupational risk to ambient environmental exposure levels should be more confidently judged to be appropriate. The relevant exposure information is presented in the RIA.

In the absence of having a unit cancer risk to assess environmental risk, EPA has considered the relevant epidemiological studies and principles for their assessment, the relative risk from occupational exposure as assessed by others, and relative exposure differences between occupational and ambient environmental levels of diesel exhaust exposure.

While uncertainty exists in estimating the possible magnitude of the environmental risk range, the likely hazard to humans together with the potential for significant environmental risks leads the Agency to believe that diesel exhaust emissions should be reduced in order to protect the public's health. We believe that this is a prudent measure in light of:

- The designation that diesel exhaust is likely to be carcinogenic to humans,
- The exposure of the entire population to various levels of diesel exhaust,
- The consistent observation of significantly increased lung cancer risk in workers exposed to diesel exhaust, and
- The potential overlap and/or relatively small difference between some occupational settings where increased lung cancer risk is reported and ambient exposures.

In the late 1980s, the International Agency for Research on Cancer (IARC) determined that diesel exhaust is ''probably carcinogenic to humans'' and the National Institute for Occupational Safety and Health classified diesel exhaust a ''potential occupational carcinogen.''[42] [43] Based on IARC findings, the State of California identified diesel exhaust in 1990 as a chemical known to the State to cause cancer. In 1996, the International Programme on Chemical Safety of the World Health Organization listed diesel exhaust as a ''probable'' human carcinogen.[44] In 1998, the California Office of Environmental Health Hazard Assessment (OEHHA, California EPA) identified diesel PM as a toxic air contaminant due to the noncancer and cancer hazard and because of the potential magnitude of the cancer risk.[45] Most recently, the U.S. Department of Health and Human Services National Toxicology Program designated diesel exhaust particles as ''reasonably anticipated to be a human carcinogen'' in its Ninth Report on Carcinogens.[46] The concern for a carcinogenicity hazard resulting from diesel exhaust exposures is longstanding and widespread.

b. Noncancer Effects of Diesel Exhaust

The acute and chronic exposure-related noncancer effects of diesel exhaust emissions are also of concern to the Agency. Acute exposure to diesel exhaust can result in physiologic symptoms consistent with irritation and inflammation, and evidence of immunological effects including increased reaction to allergens and some symptoms associated with asthma. The acute effects data, however, lack sufficient detail to permit the calculation of protective levels for human exposure.

For chronic diesel exhaust exposure, EPA is completing the development of an inhalation reference concentration (RfC). The RfC is an estimate of the continuous human inhalation exposure (including sensitive subgroups) that is likely to be without an appreciable risk of deleterious noncancer effects during a lifetime. While the limited amount of human data are suggestive of respiratory distress, animal test data are quite definitive in providing a basis to anticipate a hazard to the human lung based on the irritant and inflammatory reactions in test animals. Thus, EPA believes that chronic diesel exhaust exposure, at sufficient exposure levels, increases the hazard and risk of an adverse health effect. Based on CASAC advice regarding the use of the animal data to derive the RfC, the Agency will provide in the final Assessment in 2001 an RfC based on diesel exhaust effects in test animals of approximately 5 $\mu g/m^3$.

In addition, it is also instructive to recognize that diesel exhaust particulate matter is part of ambient fine PM. A qualitative comparison of adverse effects of exposure to ambient fine PM and diesel exhaust particulate matter shows that the respiratory system is adversely affected in both cases, though a wider spectrum of adverse effects has been identified for ambient fine PM. Relative to the diesel PM database, there is a wealth of human data for fine PM noncancer effects. Since diesel exhaust PM is a component of ambient fine PM, the fine PM health effects data base can be informative. The final Assessment will discuss the fine PM health effects data and its relation to evaluating health effects associated with diesel exhaust.

5. Other Criteria Pollutants

The standards being finalized today will help reduce levels of three other pollutants for which NAAQS have been established: carbon monoxide (CO), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). As of July, 2000, every area in the United States has been designated to be in attainment with the NO_2 NAAQS. There were 28 areas designated as nonattainment with the SO_2 standard, and 17 areas designated CO nonattainment areas.

A health threat of carbon monoxide at outdoor levels occurs for those who suffer from cardiovascular disease, such as angina petoris, where it can exacerbate the effects. Studies also show that outdoor levels can lower peak performance from individuals that are exercising and lower exercise tolerance of sensitive individuals. EPA believes that epidemiological evidence suggests that there is a risk of premature mortality and lowered birth weight from CO exposure.[47] The Carbon Monoxide Criteria Document was finalized in

[42] National Institute for Occupational Safety and Health (NIOSH) (1988) Carcinogenic effects of exposure to diesel exhaust. NIOSH Current Intelligence Bulletin 50. DHHS, Publication No. 88–116. Centers for Disease Control, Atlanta, GA.

[43] International Agency for Research on Cancer (1989) Diesel and gasoline engine exhausts and some nitroarenes, Vol. 46. Monographs on the evaluation of carcinogenic risks to humans. World Heath Organization, International Agency for Research on Cancer, Lyon, France.

[44] World Health Organization (1996) Diesel fuel and exhaust emissions: International program on chemical safety. World Health Organization, Geneva, Switzerland.

[45] Office of Environmental Health Hazard Assessment (1998) Health risk assessment for diesel exhaust, April 1998. California Environmental Protection Agency, Sacramento, CA.

[46] U.S. Department of Health and Human Services (2000) Ninth report on carcinogens. National Toxicology Program, Research Triangle Park, NC. ehis.niehs.nih.gov/roc/toc9.html.

[47] U.S. Environmental Protection Agency, Air Quality Criteria for Carbon Monoxide, June 2000.

August 2000 and made available to the public at that time.

6. Other Air Toxics

In addition to NO_X and particulates, heavy-duty vehicle emissions contain several other substances that are known or suspected human or animal carcinogens, or have serious noncancer health effects. These include benzene,1,3-butadiene, formaldehyde, acetaldehyde, acrolein, and dioxin. For some of these pollutants, heavy-duty engine emissions are believed to account for a significant proportion of total nation-wide emissions. Although these emissions will decrease in the short term, they are expected to increase between 2010 and 2020 without the emission limits, as the number of miles traveled by heavy-duty trucks increases. In the RIA, we present current and projected exposures to benzene, 1,3-butadiene, formaldehyde, and acetaldehyde from all on-highway motor vehicles.

By reducing hydrocarbon and other organic emissions, both in gas phase and bound to particles, the emission control program in today's action will also reduce the direct emissions of air toxics from HDVs. Today's action will reduce exposure to hydrocarbon and other organic emissions and therefore help reduce the impact of HDV emissions on cancer and noncancer health effects.

a. Benzene

Highway mobile sources account for 42 percent of nationwide emissions of benzene and HDVs account for 7 percent of all highway vehicle benzene emissions.[48] The EPA has recently reconfirmed that benzene is a known human carcinogen by all routes of exposure (including leukemia at high, prolonged air exposures), and is associated with additional health effects including genetic changes in humans and animals and increased proliferation of bone marrow cells in mice.[49] [50] [51] EPA believes that the data indicate a causal relationship between benzene exposure and acute lymphocytic leukemia and suggest a relationship between benzene exposure and chronic non-lymphocytic leukemia and chronic lymphocytic leukemia. Respiration is the major source of human exposure and at least half of this exposure is attributable to gasoline vapors and automotive emissions. A number of adverse noncancer health effects including blood, disorders, such as preleukemia and aplastic anemia, have also been associated with low-dose, long-term exposure to benzene.

b. 1,3-Butadiene

Highway mobile sources account for 42 percent of the annual emissions of 1,3-butadiene and HDVs account for 15 percent of the highway vehicle portion. Today's program will play an important role in reducing in the mobile contribution of 1,3-butadiene. Reproductive and/or developmental effects have been observed in mice and rats following inhalation exposure to 1,3-butadiene.[52] No information is available on developmental/reproductive effects in humans following exposure to 1,3-butadiene. In the EPA1998 draft Health Risk Assessment of 1,3-Butadiene, that was reviewed by the SAB, EPA proposed that 1,3-butadiene is a known human carcinogen based on human epidemiologic, laboratory animal data, and supporting data such as the genotoxicity of 1,3-butadiene metabolites.[53] The Environmental Health Committee of EPA's Scientific Advisory Board (SAB), reviewed the draft document in August 1998 and recommended that 1,3-butadiene be classified as a probable human carcinogen, stating that designation of 1,3-butadiene as a known human carcinogen should be based on observational studies in humans, without regard to mechanistic or other information.[54] In applying the 1996 proposed Guidelines for Carcinogen Risk Assessment, the Agency relies on both observational studies in humans as well as experimental evidence demonstrating causality and therefore the designation of 1,3-butadiene as a known human carcinogen remains applicable.[55] The Agency has revised the draft Health Risk Assessment of 1,3-Butadiene based on the SAB and public comments. The draft Health Risk Assessment of 1,3-Butadiene will undergo the Agency consensus review, during which time additional changes may be made prior to its public release and placement on the Integrated Risk Information System (IRIS).

c. Formaldehyde

Highway mobile sources contribute 24 percent of the national emissions of formaldehyde, and HDVs account for 36 percent of the highway portion. EPA has classified formaldehyde as a probable human carcinogen based on evidence in humans and in rats, mice, hamsters, and monkeys.[56] Epidemiological studies in occupationally exposed workers suggest that long-term inhalation of formaldehyde may be associated with tumors of the nasopharyngeal cavity (generally the area at the back of the mouth near the nose), nasal cavity, and sinus. Formaldehyde exposure also causes a range of noncancer health effects, including irritation of the eyes (tearing of the eyes and increased blinking) and mucous membranes. Sensitive individuals may experience these adverse effects at lower concentrations than the general population and in persons with bronchial asthma, the upper respiratory irritation caused by formaldehyde can precipitate an acute asthmatic attack. The agency is currently conducting a reassessment of risk from inhalation exposure to formaldehyde.

d. Acetaldehyde

Highway mobile sources contribute 29 percent of the national acetaldehyde emissions and HDVs are responsible for approximately 33 percent of these highway mobile source emissions. Acetaldehyde is classified as a probable human carcinogen and is considered moderately toxic by the inhalation, oral, and intravenous routes. The primary acute effect of exposure to acetaldehyde vapors is irritation of the eyes, skin, and respiratory tract. At high concentrations, irritation and pulmonary effects can occur, which could facilitate the uptake of other contaminants. The agency is currently conducting a reassessment of

[48] U.S. EPA (2000) 1996 National Toxics Inventory. http://www.epa.gov/ttn/uatw/nata. Inventory values for 1,3 butadiene, formaldehyde, acetaldehyde, and acrolein discussed below also come from this source.

[49] International Agency for Research on Cancer, IARC monographs on the evaluation of carcinogenic risk of chemicals to humans, Volume 29, Some industrial chemicals and dyestuffs, International Agency for Research on Cancer, World Health Organization, Lyon, France, p. 345–389, 1982.

[50] Irons, R.D., W.S. Stillman, D.B. Colagiovanni, and V.A. Henry, Synergistic action of the benzene metabolite hydroquinone on myelopoietic stimulating activity of granulocyte/macrophage colony-stimulating factor in vitro, Proc. Natl. Acad. Sci. 89:3691–3695, 1992.

[51] Environmental Protection Agency, Carcinogenic Effects of Benzene: An Update, National Center for Environmental Assessment, Washington, DC. 1998.

[52] Environmental Protection Agency. Draft Health Risk Assessment of 1,3-Butadiene, National Center for Environmental Assessment, Office of Research and Development, U.S. EPA, EPA/600/P–98/001A, February 1998.

[53] An SAB Report: Review of the Health Risk Assessment of 1,3-Butadiene. EPA-SAB-EHC–98, August, 1998.

[54] Scientific Advisory Board. 1998. An SAB Report: Review of the Health Risk Assessment of 1,3-Butadiene. EPA-SAB-EHC–98, August, 1998.

[55] [55]: EPA 1996. Proposed guidelines for carcinogen risk assessment. **Federal Register** 61(79):17960–18011.

[56] Environmental Protection Agency, Assessment of Health Risks to Garment Workers and Certain Home Residents from Exposure to Formaldehyde, Office of Pesticides and Toxic Substances, April 1987.

risk from inhalation exposure to acetaldehyde.

e. Acrolein

Highway mobile sources contribute 16 percent of the national acrolein emissions and HDVs are responsible for approximately 39 percent of these highway mobile source emissions. Acrolein is extremely toxic to humans when inhaled, with acute exposure resulting in upper respiratory tract irritation and congestion. The Agency has developed a reference concentration for inhalation (RfC) of acrolein of 0.02 micrograms/m^3.[57] Although no information is available on its carcinogenic effects in humans, based on laboratory animal data, EPA considers acrolein a possible human carcinogen.

f. Dioxins

Recent studies have confirmed that dioxins are formed by and emitted from heavy-duty diesel trucks and are estimated to account for 1.2 percent of total dioxin emissions in 1995. In the environment, the pathway of immediate concern is the food pathway (*e.g.*, human ingestion of certain foods, *e.g.* meat and dairy products contaminated by dioxin) which may be affected by deposition of dioxin from the atmosphere. EPA classified dioxins as probable human carcinogens in 1985. Recently EPA has proposed, and the Scientific Advisory Board has concurred, to classify one dioxin compound, 2,3,7,8-tetrachlorodibenzo-p-dioxin as a human carcinogen and the complex mixtures of dioxin-like compounds as likely to be carcinogenic to humans using the draft 1996 carcinogen risk assessment guidelines.[58] Using the 1986 cancer risk assessment guidelines, the hazard characterization for 2,3,7,8-tetrachlorodibenzo-p-dioxin is ''known'' human carcinogen and the hazard characterization for complex mixtures of dioxin-like compounds is ''probable'' human carcinogens. Acute and chronic noncancer effects have also been reported for dioxin.

7. Other Welfare and Environmental Effects

Some commenters challenged the Agency's use of adverse welfare and environmental effects associated with emissions from heavy-duty vehicles as a partial basis for this rulemaking. Other commenters went to great lengths to support the Agency's inclusion of these welfare and environmental effects. Additional information has been added since the proposal in order to update and clarify the available information on welfare and environmental impacts of heavy-duty vehicle emissions. The following section presents information on four categories of public welfare and environmental impacts related to heavy-duty vehicle emissions: acid deposition, eutrophication of water bodies, POM deposition, and impairment of visibility.

a. Acid Deposition

Acid deposition, or acid rain as it is commonly known, occurs when SO_2 and NO_X react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles.[59] It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $61 million per year if applied to all new cars and trucks sold in the U.S.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

A recent study of emissions trends and acidity of waterbodies in the Eastern United States by the General Accounting Office (GAO) found that sulfates declined in 92 percent of a representative sample of lakes from 1992 to 1999, and nitrate levels increased in 48 percent of the lakes sampled.[60] The decrease in sulfates is consistent with emissions trends, but the increase in nitrates is inconsistent with the stable levels of nitrogen emissions and deposition. The study suggests that the vegetation and land surrounding these lakes have lost some of their previous capacity to use nitrogen, thus allowing more of the nitrogen to flow into the lakes and increase their acidity. Recovery of acidified lakes is expected to take a number of years, even where soil and vegetation have not been ''nitrogen saturated,'' as EPA called the phenomenon in a 1995 study.[61] This situation places a premium on reductions of SO_X and especially NO_X from all sources, including HDVs, in order to reduce the extent and severity of nitrogen saturation and acidification of lakes in the Adirondacks and throughout the United States.

The SO_X and NO_X reductions from today's action will help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the country and help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels will also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our

[57] U.S. EPA (1993) Environmental Protection Agency, Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Cincinnati, OH.

[58] U.S. EPA (2000) Exposure and Human Health Reassessment of 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds. Part III: Integrated Summary and Risk Characterization for 2,3,7,8-Tetrachlorodibenzo-p-Dioxin (TCDD) and Related Compounds. External Review Draft. EPA/600/P–00/001Ag.

[59] Much of the information in this subsection was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995.

[60] Acid Rain: Emissions Trends and Effects in the Eastern United States, US General Accounting Office, March, 2000 (GOA/RCED–00–47).

[61] Acid Deposition Standard Feasibility Study: Report to Congress, EPA 430R–95–001a, October, 1995.

historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition also will be reduced, and the costs borne to prevent acid-related damage may also decline. While the reduction in sulfur and nitrogen acid deposition will be roughly proportional to the reduction in SO_X and NO_X emissions, respectively, the precise impact of today's action will differ across different areas.

b. Eutrophication and Nitrification

Eutrophication is the accelerated production of organic matter, particularly algae, in a water body. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations.

In 1999, NOAA published the results of a five year national assessment of the severity and extent of estuarine eutrophication. An estuary is defined as the inland arm of the sea that meets the mouth of a river. The 138 estuaries characterized in the study represent more than 90 percent of total estuarine water surface area and the total number of US estuaries. The study found that estuaries with moderate to high eutrophication conditions represented 65 percent of the estuarine surface area. Eutrophication is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the ''overproduced'' algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Severe and persistent eutrophication often directly impacts human activities. For example, losses in the nation's fishery resources may be directly caused by fish kills associated with low dissolved oxygen and toxic blooms. Declines in tourism occur when low dissolved oxygen causes noxious smalls and floating mats of algal blooms create unfavorable aesthetic conditions. Risks to human health increase when the toxins from algal blooms accumulate in edible fish and shellfish, and when toxins become airborne, causing respiratory problems due to inhalation. According to the NOAA report, more than half of the nation's estuaries have moderate to high expressions of at least one of these symptoms—an indication that eutrophication is well developed in more than half of U.S. estuaries.

In recent decades, human activities have greatly accelerated nutrient inputs, such as nitrogen and phosphorous, causing excessive growth of algae and leading to degraded water quality and associated impairments of freshwater and estuarine resources for human uses.[62] Since 1970, eutrophic conditions worsened in 48 estuaries and improved in 14. In 26 systems, there was no trend in overall eutrophication conditions since 1970.[63] On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Long-term monitoring in the United States, Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds.

On a national basis, the most frequently recommended control strategies by experts surveyed by National Oceanic and Atmospheric Administration (NOAA) between 1992–1997 were agriculture, wastewater treatment, urban runoff, and atmospheric deposition.[64] In its Third Report to Congress on the Great Waters, EPA reported that atmospheric deposition contributes from 2 to 38 percent of the nitrogen load to certain coastal waters.[65] A review of peer reviewed literature in 1995 on the subject of air deposition suggests a typical contribution of 20 percent or higher.[66] Human-caused nitrogen loading to the Long Island Sound from the atmosphere was estimated at 14 percent by a collaboration of federal and state air and water agencies in 1997.[67] The National Exposure Research Laboratory, US EPA, estimated based on prior studies that 20 to 35 percent of the nitrogen loading to the Chesapeake Bay is attributable to atmospheric deposition.[68] The mobile source portion of atmospheric NO_X contribution to the Chesapeake Bay was modeled at about 30 percent of total air deposition.[69]

Deposition of nitrogen from heavy-duty vehicles contributes to elevated nitrogen levels in waterbodies. In the Chesapeake Bay region, modeling shows that mobile source deposition occurs in relatively close proximity to highways, such as the 1–95 corridor which covers part of the Bay surface. The new standards for heavy-duty vehicles will reduce total NO_X emissions by 2.6 million tons in 2030. The NO_X reductions will reduce the airborne nitrogen deposition that contributes to eutrophication of watersheds, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings.

c. Polycyclic Organic Matter Deposition

EPA's Great Waters Program has identified 15 pollutants whose deposition to water bodies has contributed to the overall contamination loadings to the these Great Waters.[70] One of these 15 pollutants, a group known as polycyclic organic matter (POM), are compounds that are mainly adhered to the particles emitted by mobile sources and later fall to earth in the form of precipitation or dry deposition of particles. The mobile source contribution of the 7 most toxic POM is at least 62 tons/year and represents only those POM that adhere to mobile source particulate emissions.[71] The majority of these emissions are produced by diesel engines.

[62] Deposition of Air Pollutants to the Great Waters, Third Report to Congress, June, 2000.

[63] Deposition of Air Pollutants to the Great Waters, Third Report to Congress, June, 2000. Great Waters are defined as the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters. The first report to Congress was delivered in May, 1994; the second report to Congress in June, 1997.

[64] Bricker, Suzanne B., et al., National Estuarine Eutrophication Assessment, Effects of Nutrient Enrichment in the Nation's Estuaries, National Ocean Service, National Oceanic and Atmospheric Administration, September, 1999.

[65] Deposition of Air Pollutants to the Great Waters, Third Report to Congress, June, 2000.

[66] Valigura, Richard, et al., Airsheds and Watersheds II: A Shared Resources Workshop, Air Subcommittee of the Chesapeake Bay Program, March, 1997.

[67] The Impact of Atmospheric Nitrogen Deposition on Long Island Sound, The Long Island Sound Study, September, 1997.

[68] Dennis, Robin L., Using the Regional Acid Deposition Model to Determine the Nitrogen Deposition Airshed of the Chesapeake Bay Watershed, SETAC Technical Publications Series, 1997.

[69] Dennis, Robin L., Using the Regional Acid Deposition Model to Determine the Nitrogen Deposition Airshed of the Chesapeake Bay Watershed, SETAC Technical Publications Series, 1997.

[70] Deposition of Air Pollutants to the Great Waters—Third Report to Congress, June, 2000, Office of Air Quality Planning and Standards Deposition of Air Pollutants to the Great Waters—Second Report to Congress, Office of Air Quality Planning and Standards, June 1997, EPA–453/R–97–011.

[71] The 1996 National Toxics Inventory, Office of Air Quality Planning and Standards, October 1999.

POM is generally defined as a large class of chemicals consisting of organic compounds having multiple benzene rings and a boiling point greater than 100 degrees C. Polycyclic aromatic hydrocarbons are a chemical class that is a subset of POM. POM are naturally occurring substances that are byproducts of the incomplete combustion of fossil fuels and plant and animal biomass (e.g., forest fires). Also, they occur as byproducts from steel and coke productions and waste incineration. Evidence for potential human health effects associated with POM comes from studies in animals (fish, amphibians, rats) and in human cells culture assays. Reproductive, developmental, immunological, and endocrine (hormone) effects have been documented in these systems. Many of the compounds included in the class of compounds known as POM are classified by EPA as probable human carcinogens based on animal data.

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The particulate reductions from today's action will help reduce not only the particulate emissions from highway diesel engines but also the deposition of the POM adhering to the particles, thereby helping to reduce health effects of POM in lakes and streams, accelerate the recovery of affected lakes and streams, and revive the ecosystems adversely affected.

d. Visibility and Regional Haze

Visibility impairment, also called regional haze, is a complex problem caused by a variety of sources, both natural and anthropogenic (e.g., motor vehicles). Regional haze masks objects on the horizon and reduces the contrast of nearby objects. The formation, extent, and intensity of regional haze are functions of meteorological and chemical processes, which sometimes cause fine particle loadings to remain suspended in the atmosphere for several days and to be transported hundreds of kilometers from their sources (NRC, 1993).

Visibility has been defined as the degree to which the atmosphere is transparent to visible light (NRC, 1993). Visibility impairment is caused by the scattering and absorption of light by particles and gases in the atmosphere. Fine particles (0.1 to 2.5 microns in diameter) are more effective per unit mass concentration at impairing visibility than either larger or smaller particles (NAPAP, 1991). Most of the diesel particle mass emitted by diesel engines falls within this fine particle size range. Light absorption is often caused by elemental carbon, a product of incomplete combustion from activities such as burning diesel fuel or wood. These particles cause light to be scattered or absorbed, thereby reducing visibility.

Heavy-duty vehicles contribute a significant portion of the emissions of direct PM, NO_X, and SO_X that result in ambient PM that contributes to regional haze and impaired visibility. The Grand Canyon Visibility Transport Commission's report found that heavy-duty diesel vehicles contribute 41 percent of fine elemental carbon or soot, 20 percent of NO_X, 7 percent of fine organic carbon, and 6 percent of SO_X. The report also found that reducing total mobile source emissions is an essential part of any program to protect visibility in the Western U.S. The Commission identified mobile source pollutants of concern as VOC, NO_X, and elemental and organic carbon. The Western Governors Association, in later commenting on the Regional Haze Rule and on protecting the 16 Class I areas on the Colorado Plateau, stated that the federal government, and particularly EPA, must do its part in regulating emissions from mobile sources that contribute to regional haze in these areas. As described more fully later in this section, today's action will result in large reductions in these pollutants. These reductions are expected to provide an important step towards improving visibility across the nation. Emissions reductions being achieved to attain the 1-hour ozone and PM_{10} NAAQS will assist in visibility improvements. Moreover, the timing of the reductions from the standards fits very well with the goals of the regional haze program. We will work with the regional planning bodies to make sure they have the information to take account of the reductions from this final rule in their planning efforts.

The Clean Air Act contains provisions designed to protect national parks and wilderness areas from visibility impairment. In 1999, EPA promulgated a rule that will require States to develop plans to dramatically improve visibility in national parks. Although it is difficult to determine natural visibility levels, we believe that average visual range in many Class I areas in the United States is significantly less (about 50–66 percent of natural visual range in the West, about 20 percent of natural visual range in the East) than the visual range that will exist without anthropogenic air pollution. The final Regional Haze Rule establishes a 60-year time period for planning purposes, with several near term regulatory requirements, and is applicable to all 50 states. One of the obligations is for States to representative conduct visibility monitoring in mandatory Class I Federal areas and determine baseline conditions using data for year 2000 to 2004. Reductions of particles, NO_X, sulfur, and VOCs from this rulemaking will have a significant impact on moving all states towards achieving long-term visibility goals, as outlined in the 1999 Regional Haze Rule.

C. Contribution from Heavy-Duty Vehicles

Nationwide, heavy-duty vehicles are projected to contribute about 15 percent of the total NO_X inventory, and 28 percent of the mobile source inventory in 2007. Heavy-duty NO_X emissions also contribute to fine particulate concentrations in ambient air due to the transformation in the atmosphere to nitrates. The NO_X reductions resulting from today's standards will therefore have a considerable impact on the national NO_X inventory. All highway vehicles account for 34 percent and heavy-duty highway vehicles account for 20 percent of the mobile source portion of national PM_{10} emissions in 2007. The heavy-duty portion of the inventory is often greater in the cities, and the reductions in this rulemaking will have a relatively greater benefit in those areas.

1. NO_X Emissions

Heavy-duty vehicles are important contributors to the national inventories of NO_X emissions. Without NO_X reductions from this rule, HDVs are expected to contribute approximately 18 percent of annual NO_X emissions in 1996. The HDV contribution is predicted to fall to 15 percent in 2007 and 14 percent in 2020 due to reductions from the 2004 heavy-duty rulemaking, and then rise again to 16 percent of total NO_X inventory by 2030 (Table II.C–1). Annual NO_X reductions from this rule are expected to total 2.6 million tons in 2030.

TABLE II.C–1—NO_X EMISSIONS FROM HDVS WITH AND WITHOUT REDUCTIONS FROM THIS RULE

Year	Without this rule (base case)		With this rule (control case)
	HDV annual NO_X tons	HDV annual NO_X tons as a percent of total NO_X	Reductions in annual HDV NO_X tons
1996	4,810,000	18	n/a
2007	3,040,000	15	58,000
2020	2,560,000	14	1,820,000
2030	2,960,000	16	2,570,000

The contribution of heavy-duty vehicles to NO_X inventories in many MSAs is significantly greater than that reflected in the national average. For example, HDV contributions to total annual NO_X is greater than the national average in the eight metropolitan statistical areas listed in Table II.C–2. Examples of major cities with a history of persistent ozone violations that are heavily impacted by NO_X emissions from HDVs include: Los Angeles, Washington, DC, San Diego, Hartford, Atlanta, Sacramento. As presented in the table below, HDV's contribute from 22 percent to 33 percent of the total NO_X inventories in these selected cities. NO_X emissions also contribute to the formation of fine particulate matter, especially in the West. In all areas, NO_X also contributes to environmental and welfare effects such as regional haze, and eutrophication and nitrification of water bodies.

TABLE II.C–2—HEAVY-DUTY VEHICLE PERCENT CONTRIBUTION TO NO_X INVENTORIES IN SELECTED URBAN AREAS IN 2007

MSA, CMSA / State	HDV NO_X as portion of total NO_X (%)	HDV NO_X as portion of mobile source NO_X (%)
National	*15*	*28*
Sacramento, CA	33	37
Hartford, CT	28	38
San Diego, CA	25	28
San Francisco, CA	24	29
Atlanta, GA	22	34
Los Angeles	22	26
Dallas	22	28
Washington-Baltimore, MSA	22	36

2. PM Emissions

Nationally, we estimate that primary emissions of PM_{10} to be about 33 million tons/year in 2007. Fugitive dust, other miscellaneous sources and crustal material (wind erosion) constitute approximately 90 percent of the 2007 PM_{10} inventory. However, there is evidence from ambient studies that emissions of these materials may be overestimated and/or that once emitted they have less of an influence on monitored PM concentration than this inventory share would suggest. Mobile sources account for 22 percent of the PM_{10} inventory (excluding the contribution of miscellaneous and natural sources) and highway heavy-duty engines, the subject of today's action, account for 20 percent of the mobile source portion of national PM_{10} emissions in 2007.

The contribution of heavy-duty vehicle emissions to total PM emissions in some metropolitan areas is substantially higher than the national average. This is not surprising, given the high density of these engines operating in these areas. For example, in Los Angeles, Atlanta, Hartford, San Diego, Santa Fe, Cincinnati, and Detroit, the estimated 2007 highway heavy-duty vehicle contribution to mobile source PM_{10} ranges from 25 to 38 percent, while the national percent contribution to mobile sources for 2007 is projected to be about 20 percent. As illustrated in Table II.C–3, heavy-duty vehicles operated in El Paso, Indianapolis, San Francisco, and Minneapolis also account for a higher portion of the mobile source PM inventory than the national average. These data are based on updated inventories developed for this rulemaking. Importantly, these estimates do not include the contribution from secondary PM, which is an important component of diesel PM.

TABLE II.C–3—2007 HEAVY-DUTY VEHICLE CONTRIBUTION TO URBAN MOBILE SOURCE PM INVENTORIES

MSA, State	HDV PM Contribution to mobile source PMG[a]
National (48 State)	*20*
Atlanta, GA MSA	25
Cincinnati-Hamilton, OH–KY–IN CMSA	26
Detroit-Ann Arbor-Flint, MI CMSA	25
El Paso, TX MSA	23
Hartford, CT MSA	30
Indianapolis, IN MSA	23
Los Angeles-Riverside-Orange County, CA CMSA	25
Minneapolis-St. Paul, MN–WI MSA	23
San Diego, CA MSA	27
San Francisco-Oakland-San Jose, CA CMSA	24
Santa Fe, NM MSA	38

[a] Direct exhaust emissions only; excludes secondary PM.

The city-specific emission inventory analysis and investigations of ambient $PM_{2.5}$ summarized in the RIA indicate that the contribution of diesel engines to PM inventories in several urban areas around the U.S. is much higher than indicated by the national PM emission inventories only. One possible explanation for this is the concentrated use of diesel engines in certain local or regional areas which is not well represented by the national, yearly average presented in national PM emission inventories. Another reason may be underestimation of the in-use diesel PM emission rates. Our current modeling incorporates deterioration only as would be experienced in properly maintained, untampered vehicles. We are currently in the process of reassessing the rate of in-use deterioration of diesel engines and vehicles which could significantly increase the contribution of HDVs to diesel PM.

3. Environmental Justice

Environmental justice is a priority for EPA. The Federal government stated its concern, in part, over this issue through issuing Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations (February 11, 1994). This Order requires that federal agencies make achieving environmental justice part of their mission. Similarly, the EPA created an Office of Environmental Justice (originally the Office of Environmental Equity) in 1992, commissioned a task force to address environmental justice issues, oversees a Federal Advisory Committee addressing environmental justice issues (the National Environmental Justice Advisory Council), and has developed an implementation strategy as required under Executive Order 12898.

Application of environmental justice principles as outlined in the Executive Order advances the fair treatment of people of all races, income, and culture with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. Fair treatment implies that no person or group of people should shoulder a disproportionate share of any negative environmental impacts resulting from the execution of this country's domestic and foreign policy programs.

For the last several years, environmental organizations and community-based citizens groups have been working together to phase out diesel buses in urban areas. For example, the Natural Resources Defense Council initiated a ''Dump Dirty Diesel'' campaign in the 1990s to press for the phase out of diesel buses in New York City. Other environmental organizations operating in major cities such as Boston, Newark, and Los Angeles have joined this campaign. The Coalition for Clean Air worked with NRDC and other experts to perform exposure monitoring in communities located near distribution centers where diesel truck traffic is heavy. These two organizations concluded that facilities with heavy truck traffic are exposing local communities to diesel exhaust concentrations far above the average levels in outdoor air. The report states: ''These affected communities, and the workers at these distribution facilities with heavy diesel truck traffic, are bearing a disproportionate burden of the health risks.'' [72] Other diesel ''hot spots'' identified by the groups are bus terminals, truck and bus maintenance facilities, retail distribution centers, and busy streets and highways.

While there is currently a limited understanding of the relationship of environmental exposures to the onset of asthma, the environmental triggers of asthma attacks for children with asthma have become increasingly well characterized.[73] Asthma's burden falls hardest on the poor, inner city residents, and children. Among children up to 4 years of age, asthma prevalence increased 160 percent since 1980.[74] African-American children have an annual rate of hospitalization three times that for white children, and are four times as likely to seek care at an emergency room.[75] In 1995, the death rate from asthma in African-American children, 11.5 per million, was over four times the rate in white American children, 2.6 per million.[76]

Local community groups and private citizens testified at public hearings held for this rule that the residents of their communities suffer greatly, and disproportionally, from air pollution in general, and emissions from heavy-duty vehicles in particular. For example, a testifier in New York pointed out that ''since Northern Manhattan and the South Bronx experience asthma mortality and morbidity rates at three to five times greater than the citywide average, New York City's problem is Northern Manhattan's crisis.'' [77]

The new standards established in this rulemaking are expected to improve air quality across the country and will provide increased protection to the public against a wide range of health effects, including chronic bronchitis, respiratory illnesses, and aggravation of asthma symptoms. These air quality and public health benefits could be expected to mitigate some of the environmental justice concerns related to heavy-duty vehicles since the rule will provide relatively larger benefits to heavily impacted urban areas.

D. Anticipated Emissions Benefits

This subsection presents the emission benefits we anticipate from heavy-duty vehicles as a result of our new NO_X, PM, and NMHC emission standards for heavy-duty engines. The graphs and tables that follow illustrate the Agency's projection of future emissions from heavy-duty vehicles for each pollutant. The baseline case represents future emissions from heavy-duty vehicles at present standards (including the MY2004 standards). The controlled case quantifies the future emissions of heavy-duty vehicles once the new standards in this FRM are implemented.

We use the same baseline inventory as is used in the county-by-county, hour-by-hour air quality analyses associated with this rule. However, we made a slight modification to the controlled inventory to incorporate the changes between the proposed and final standards. Because the detailed air quality analyses took several months to perform, we had to use the proposed standards for the air quality analysis. Since beginning this analysis, we updated the control case emission inventories to reflect the final phase-in of the NO_X standard, slight changes to the timing of the HDGV standards, a temporary compliance option for introducing the low sulfur fuel requirements, and various hardship provisions for refiners in our emission inventory projections. The emission inventory calculations are presented in detail in the Regulatory Impact Analysis.

1. NO_X Reductions

The Agency expects substantial NO_X reductions on both a percentage and a tonnage basis from the new standards. The RIA provides additional projections between 2007 and 2030. As stated previously, HDVs contribute about 15 percent to the national NO_X inventory for all sources in 2007. Figure II.D–1 shows our national projections of total NO_X emissions with and without the engine controls finalized today. Table II.D–1 presents the total reductions.[78] This includes both exhaust and crankcase emissions.[79] The standards

[72] *Exhausted by Diesel: How America's Dependence on Diesel Engines Threatens Our Health,* Natural Resources Defense Council, Coalition for Clean Air, May 1998.

[73] *Asthma and the Environment: A Strategy to Protect Children, President's Task Force on Environmental Health Risks and Safety Risks to Children,* January 28, 1999, Revised May, 2000.

[74] Asthma Statistics, National Institutes of Health, National Heart, Lung and Blood Institute, January, 1999.

[75] *Asthma and the Environment: A Strategy to Protect Children, President's Task Force on Environmental Health Risks and Safety Risks to Children,* January 28, 1999, Revised May, 2000. The Task Force was formed in conjunction with Executive Order 13045 (April 21, 1997), is co-chaired by Department of Health and Human Services and EPA, and is charged with recommending strategies for protecting children's environmental health and safety. In April, 1998, the Task Force identified childhood asthma as one of its top four priorities for immediate attention.

[76] *Id.*

[77] Testimony by Peggy Shepard, Executive Director, West Harlem Environmental Action, June 19th, 2000.

[78] The baseline used for this calculation is the 2004 HDV standards (64 FR 58472). These reductions are in addition to the NO_X emissions reductions projected to result from the 2004 HDV standards.

[79] We include in the NO_X projections excess emissions, developed by the EPA's Office of Enforcement and Compliance, that were emitted by many model year 1998–98 diesel engines. This is described in more detail in Chapter 2 of the RIA.

should result in close to a 90 percent reduction in NO_X from new engines.

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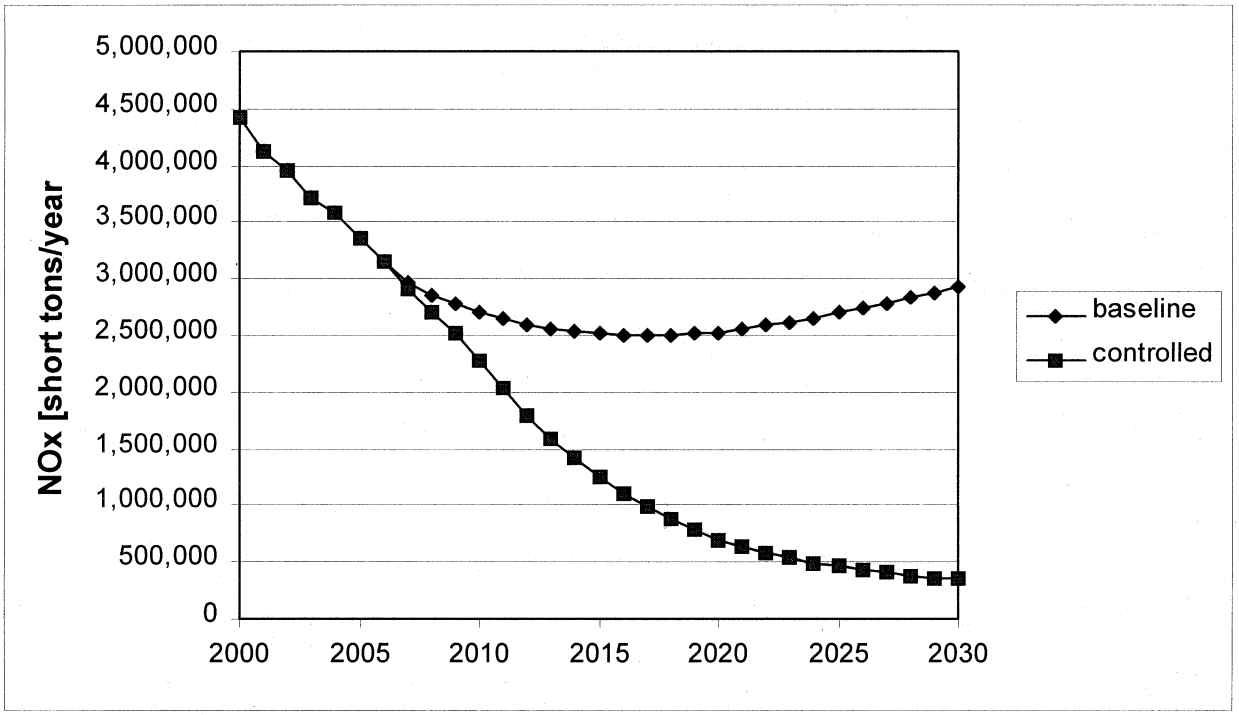

Figure II.D-1: Projected Nationwide Heavy-Duty Vehicle NOx Emissions

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TABLE II.D–1.—ESTIMATED REDUCTIONS IN NO_X

Calendar year	NO_X reduction [thousand short tons]
2007	58
2010	419
2015	1,260
2020	1,820
2030	2,570

2. PM Reductions

As stated previously, HDVs will contribute about 20 percent to the 2007 national PM_{10} inventory for mobile sources. The majority of the projected PM reductions are directly a result of the exhaust PM standard. However, a modest amount of PM reductions will come from reducing sulfur in the fuel. For the existing fleet of heavy-duty vehicles, a small fraction of the sulfur in diesel fuel is emitted directly into the atmosphere as direct sulfate, and a portion of the remaining fuel sulfur is transformed in the atmosphere into sulfate particles, referred to as indirect sulfate. Reducing sulfur in the fuel decreases the amount of direct sulfate PM emitted from heavy-duty diesel engines and the amount of heavy-duty diesel engine SOx emissions that are transformed into indirect sulfate PM in the atmosphere.[80] For engines meeting the new standards, we consider low sulfur fuel to be necessary to enable the PM control technology. In other words, we do not claim an additional benefit beyond the new exhaust standard for reductions in direct sulfate PM for new engines. However, once the low sulfur fuel requirements go into effect, many pre-2007 model year engines would also be using low sulfur fuel. Because these pre-2007 model year engines are certified with higher sulfur fuel, they will achieve reductions in PM beyond their certification levels.

Figure II.D–2 shows our national projections of total HDV PM (TPM) emissions with and without the new engine controls. This figure includes brake and tire wear, crankcase emissions and the direct sulfate PM (DSPM) benefits due to the use of low sulfur fuel by the existing fleet. These direct sulfate PM benefits from the existing fleet are also graphed separately. The new standards will result in about a 90 percent reduction in exhaust PM from new heavy-duty diesel engines. The low sulfur fuel should result in more than a 95 percent reduction in direct sulfate PM from pre-2007 heavy-duty diesel engines. Due to complexities of the conversion and removal processes of sulfur dioxide, we do not attempt to quantify the indirect sulfate reductions that would be derived from this rulemaking in the inventory analysis. Nevertheless, we recognize that these indirect sulfate PM reductions contribute significant additional benefits to public health and welfare, and we include this effect in our more detailed air quality analysis.

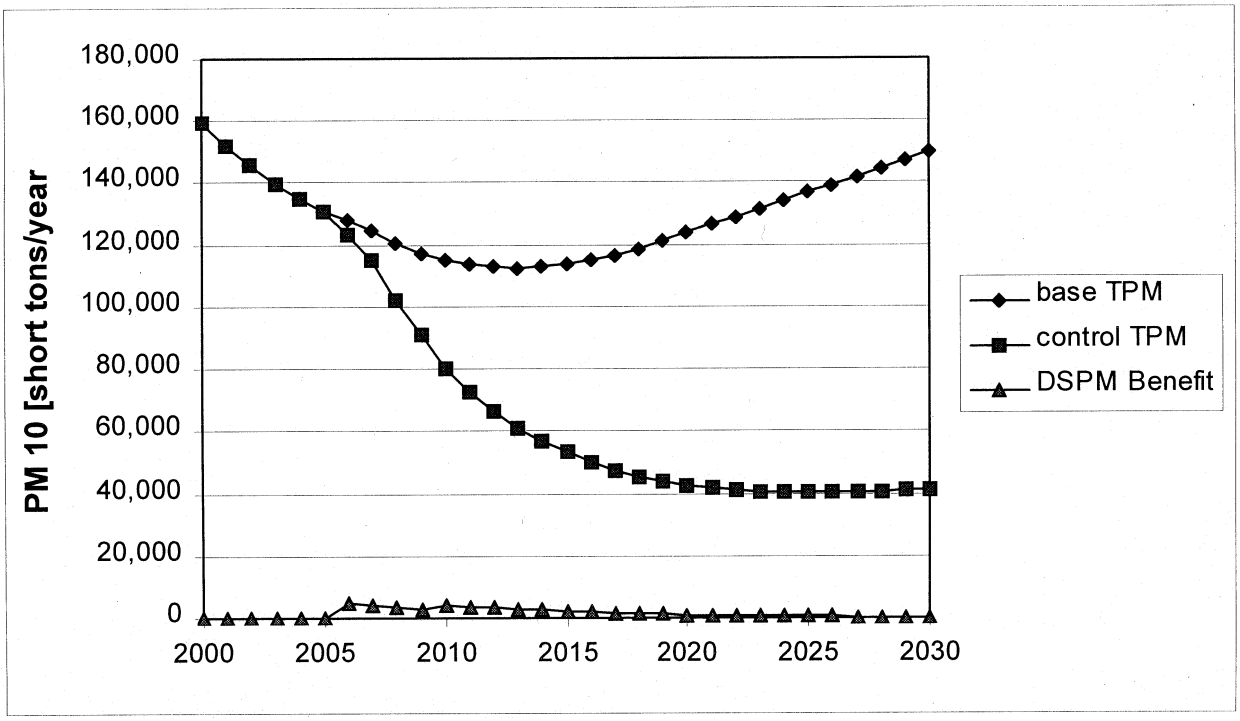

Figure II.D-2: Projected Nationwide Heavy-Duty Vehicle PM Emissions and Direct Sulfate Emission Reductions

[80] Sulfate forms a significant portion of total fine particulate matter in the Northeast Chemical speciation data in the Northeast collected in 1995 shows that the sulfate fraction of fine particulate matter ranges from 20 and 27 percent of the total fine particle mass. *Determination of Fine Particle and Concentrations and Chemical Composition in the Northeastern United States. 1995.* NESCAUM, prepared by Cass, et al., September 1999.

TABLE II.D–2.—ESTIMATED REDUCTIONS IN PM

Calendar year	PM reduction [thousand short tons]
2007	11
2010	36
2015	61
2020	82
2030	109

3. NMHC Reductions

The standards described in Section III are designed to be feasible for both gasoline and diesel heavy-duty vehicles. Although the standards give manufacturers the same phase-in for NMHC as for NO_X, we model the NMHC reductions for diesel vehicles to be fully in place in 2007 due to the application of particulate control technology. We believe the use of aftertreatment for PM control will cause the NMHC levels to be below the standards as soon as the PM standard goes into effect in 2007.

HDVs account for about 3 percent of national VOC and 8 percent from mobile sources in 2007. Figure II.D–3 shows our national projections of total NMHC emissions with and without the new engine controls. This includes both exhaust emissions and evaporative emissions. Table II.D–3 presents the projected reductions of NMHC due to the new standards.

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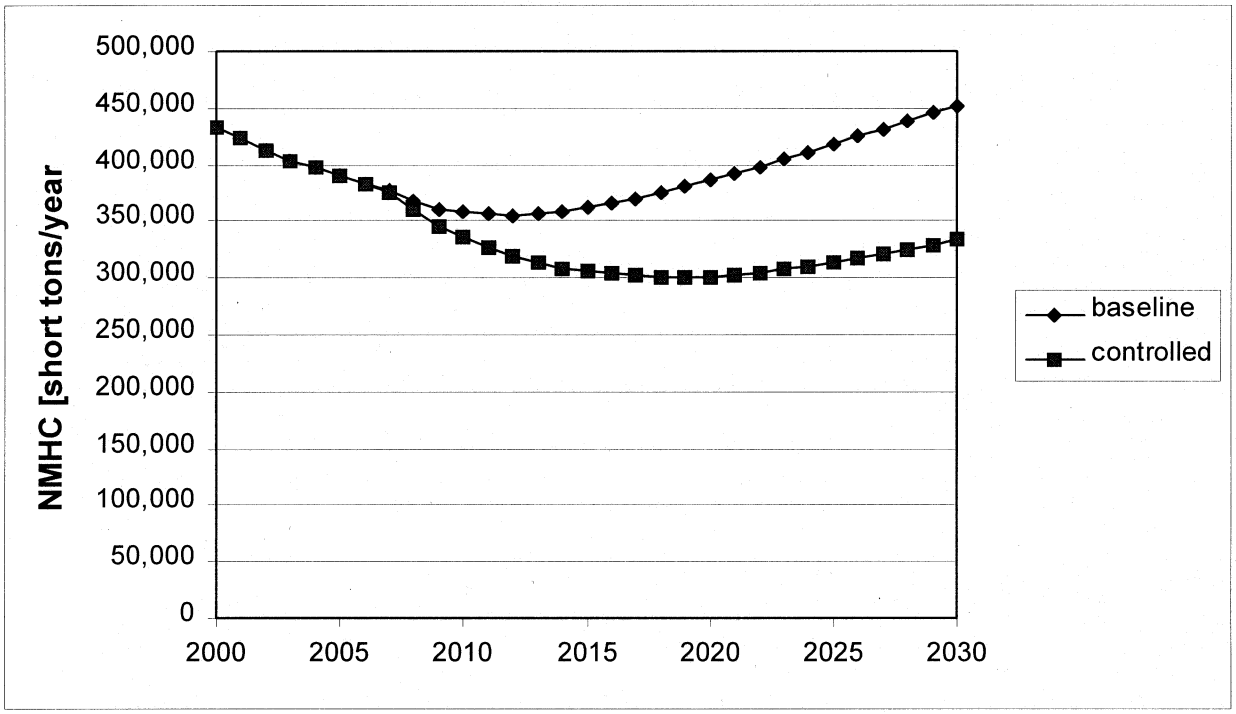

Figure II.D-3: Projected Nationwide Heavy-Duty Vehicle NMHC Emissions

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TABLE II.D–3.—ESTIMATED REDUCTIONS IN NMHC

Calendar year	NMHC reduction [thousand short tons]
2007	2
2010	21
2015	54
2020	83
2030	115

TABLE II.D–4.—ESTIMATED REDUCTIONS IN CO

Calendar year	CO reduction [thousand short tons]
2007	56
2010	317
2015	691
2020	982
2030	1,290

4. Additional Emissions Benefits

This subsection looks at tons/year emission inventories of CO, SO_X, and air toxics from HDEs. Although we are not including stringent standards for these pollutants in this action, we believe the standards will result in reductions in CO, SO_X, and air toxics. Here, we present our anticipated benefits.

a. CO Reductions

In 2007, HDVs are projected to contribute to approximately 5 percent of national CO and 9 percent of CO from mobile sources. Although it does not include new CO emission standards, today's action would nevertheless be expected to result in a considerable reduction in CO emissions from heavy-duty vehicles. CO emissions from heavy-duty diesel vehicles, although already very low, would likely be reduced by an additional 90 percent due to the operation of emissions control systems that will be necessary to achieve today's new standards for hydrocarbons and particulate matter. CO emissions from heavy-duty gasoline vehicles would also likely decline as the NMHC emissions are decreased. Table II.D–4 presents the projected reductions in CO emissions from HDVs.

b. SO_X Reductions

HDVs are projected to emit approximately 0.5 percent of national SO_X and 8 percent of mobile source SO_X in 2007. We are requiring significant reductions in diesel fuel sulfur to enable certain emission control devices to function properly. We expect SO_X emissions to decline as a direct benefit of low sulfur diesel fuel. The majority of these benefits will be from heavy-duty highway diesel vehicles; however, some benefits will also come from highway fuel burned in other applications such as light-duty diesel vehicles and nonroad engines. As discussed in greater detail in the section on PM reductions, the amount of sulfate particles (direct and indirect) formed as a result of diesel exhaust emissions will decline for all HD diesel engines operated on low sulfur diesel fuel, including the current on-highway HD diesel fleet, and those non-road HD diesel engines that may operate on low sulfur diesel fuel in the future. Table II.D–5 presents our estimates of SO_X reductions resulting from the low sulfur fuel.

TABLE II.D–5.—ESTIMATED REDUCTIONS IN SO_X DUE TO LOW SULFUR FUEL

Calendar year	SO_X reduction [thousand short tons]
2007	79
2010	107
2015	117
2020	126
2030	142

c. Air Toxics Reductions

This FRM establishes new non-methane hydrocarbon standards for all heavy-duty vehicles and a formaldehyde standard for complete heavy-duty vehicles. Hydrocarbons are a broad class of chemical compounds containing carbon and hydrogen. Many forms of hydrocarbons, such as formaldehyde, are directly hazardous and contribute to what are collectively called ''air toxics.'' Air toxics are pollutants known to cause or suspected of causing cancer or other serious human health effects or ecosystem damage. The Agency has identified at least 20 compounds emitted from on-road gasoline vehicles that have toxicological potential, 19 of which are emitted by diesel vehicles, as well as an additional 20 compounds which have been listed as toxic air contaminants by California ARB.[81] [82] This action also will reduce emissions of diesel exhaust and diesel particulate matter (see Section II.B for a discussion of health effects).

Our assessment of heavy-duty vehicle (gasoline and diesel) air toxics focuses on the following compounds with cancer potency estimates that have significant emissions from heavy-duty vehicles: benzene, formaldehyde, acetaldehyde, and 1,3-butadiene. These compounds are an important, but limited, subset of the total number of air toxics that exist in exhaust and evaporative emissions from heavy-duty vehicles. The reductions in air toxics quantified in this section represent only a fraction of the total number and amount of air toxics reductions expected from the new hydrocarbon standards.

For this analysis, we estimate that air toxic emissions are a constant fraction of hydrocarbon exhaust emissions from future engines. Because air toxics are a

[81] National Air Quality and Emissions Trends Report, 1997, (EPA 1998), p. 74.

[82] California Environmental Protection Agency (1998) Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant. Appendix III, Part A: Exposure Assessment. April 1998.

subset of hydrocarbons, and new emission controls are not expected to preferentially control one type of air toxic over another, the selected air toxics chosen for this analysis are expected to decline by the same percentage amount as hydrocarbon exhaust emissions. We have not performed a separate analysis for the new formaldehyde standard since compliance with the hydrocarbon standard should result in compliance with the formaldehyde standard for all petroleum-fueled engines. The RIA provides more detail on this analysis. Table II.D–6 shows the estimated air toxics reductions associated with the reductions in hydrocarbons.

TABLE II.D–6.—ESTIMATED REDUCTIONS IN AIR TOXICS (SHORT TONS)

Calendar year	Benzene	Formaldehyde	Acetaldehyde	1,3-Butadiene
2007	24	181	67	14
2010	356	1,670	608	135
2015	965	4,720	1,720	384
2020	1,340	7,080	2,600	567
2030	1,960	10,200	3,730	823

E. Clean Heavy-Duty Vehicles and Low-Sulfur Diesel Fuel are Critically Important for Improving Human Health and Welfare

Despite continuing progress in reducing emissions from heavy-duty engines, emissions from these engines continue to be a concern for human health and welfare. Ozone continues to be a significant public health problem, and affects not only people with impaired respiratory systems, such as asthmatics, but healthy children and adults as well. Ozone also causes damage to plants and has an adverse impact on agricultural yields. Particulate matter, like ozone, has been linked to a range of serious respiratory health problems, including premature mortality, aggravation of respiratory and cardiovascular disease, aggravated asthma, acute respiratory symptoms, and chronic bronchitis. Importantly, EPA has concluded that diesel exhaust is likely to be carcinogenic to humans by inhalation at occupational and environmental levels of exposure.

Today's action will reduce NO_X, VOC, CO, PM, and SO_X emissions from these heavy-duty vehicles substantially. These reductions will help reduce ozone levels nationwide and reduce the frequency and magnitude of predicted exceedances of the ozone standard. These reductions will also help reduce PM levels, both by reducing direct PM emissions and by reducing emissions that give rise to secondary PM. The NO_X and SO_X reductions will help reduce acidification problems, and the NO_X reductions will help reduce eutrophication problems. The PM and NO_X standard enacted today will help improve visibility. All of these reductions are expected to have a beneficial impact on human health and welfare by reducing exposure to ozone, PM, diesel exhaust and other air toxics and thus reducing the cancer and noncancer effects associated with exposure to these substances.

III. Heavy-Duty Engine and Vehicle Standards

In this section, we describe the vehicle and engine standards we are finalizing today to respond to the serious air quality needs discussed in Section II. Specifically, we discuss:

- The CAA and why we are finalizing new heavy-duty standards.
- The technology opportunity for heavy-duty vehicles and engines.
- Our new HDV and HDE standards, and our phase-in of those standards.
- Why we believe the stringent standards being finalized today are feasible in conjunction with the low sulfur gasoline required under the recent Tier 2 rule and the low sulfur diesel fuel being finalized today.
- The effects of diesel fuel sulfur on the ability to meet the new standards, and what happens if high sulfur diesel fuel is used.
- Plans for future review of the status of heavy-duty diesel NO_X emission control technology.

A. Why Are We Setting New Heavy-Duty Standards?

We are finalizing new heavy-duty vehicle and engine standards and related provisions under section 202(a)(3) of the CAA, which authorizes EPA to establish emission standards for new heavy-duty motor vehicles. (See 42 U.S.C. 7521(a)(3).) Section 202(a)(3)(A) requires that such standards ''reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.'' Section 202(a)(3)(B) allows EPA to take into account air quality information in revising such standards. Because heavy-duty engines contribute greatly to a number of serious air pollution problems, especially the health and welfare effects of ozone, PM, and air toxics, and because millions of Americans live in areas that exceed the national air quality standards for ozone or PM, we believe the air quality need for tighter heavy-duty standards is well founded. This, and our belief that a significant degree of emission reduction from heavy-duty vehicles and engines is achievable, giving appropriate consideration to cost, energy, and safety factors, through the application of new diesel emission control technology, further refinement of well established gasoline emission controls, and reductions of diesel fuel sulfur levels, leads us to believe that new emission standards are warranted.

B. Emission Control Technologies for Heavy-Duty Vehicles and Engines

For the past 30 or more years, emission control development for gasoline vehicles and engines has concentrated most aggressively on exhaust emission control devices. These devices currently provide as much as or more than 95 percent of the emission control on a gasoline vehicle. In contrast, the emission control development work for diesels has concentrated on improvements to the engine itself to limit the emissions leaving the combustion chamber.

However, during the past 15 years, more development effort has been put into diesel exhaust emission control devices, particularly in the area of PM control. Those developments, and recent developments in diesel NO_X control devices, make the widespread commercial use of diesel exhaust emission controls feasible. Through use of these devices, we believe emissions control similar to that attained by gasoline applications will be possible with diesel applications. However, without low sulfur diesel fuel, these technologies cannot be implemented on heavy-duty diesel applications. Low sulfur diesel fuel will at the same time

also allow these technologies to be implemented on light-duty diesel applications.

As discussed at length in the preamble to our proposal, several exhaust emission control devices have been or are being developed to control harmful diesel exhaust pollutants. Of these, we believe that the catalyzed diesel particulate trap and the NO_X adsorber are the most likely candidates to be used to meet the very low diesel exhaust emission standards adopted today on the variety of applications in the heavy-duty diesel market. While other technologies exist that have the potential to provide significant emission reductions, such as selective catalytic reduction systems for NO_X control, and development of these technologies is being pursued to varying degrees, we believe that the catalyzed diesel particulate trap and the NO_X adsorber will be the only likely broadly applicable technology choice by the makers of engines and vehicles for the national fleet in this timeframe. However, as discussed in detail in the Final RIA, we strongly believe that none of these technologies can be brought to market on diesel engines and vehicles unless the kind of low sulfur diesel fuel adopted in this rule is available.

As for gasoline engines and vehicles, improvement continues to be made to gasoline emissions control technology. This includes improvement to catalyst designs in the form of improved washcoats and improved precious metal dispersion. Much effort has also been put into improved cold start strategies that allow for more rapid catalyst light-off. This can be done by retarding the spark timing to increase the temperature of the exhaust gases, and by using air-gap manifolds, exhaust pipes, and catalytic converter shells to decrease heat loss from the system.

These improvements to gasoline emission controls will be made in response to the California LEV–II standards and the federal Tier 2 standards.[83] These improvements should transfer well to the heavy-duty gasoline segment of the fleet. With such migration of light-duty technology to heavy-duty vehicles and engines, we believe that considerable improvements to heavy-duty gasoline emissions can be realized, thus allowing vehicles to meet the much more stringent standards adopted today.

The following discussion provides more detail on the technologies we believe are most capable of meeting very stringent heavy-duty emission standards. The goal of this discussion is to describe the emission reduction capability of these emission control technologies and their critical need for diesel fuel sulfur levels as low as those being finalized today. But first, we present the details of the new emission standards being finalized today.

C. What Engine and Vehicle Standards Are We Finalizing?

1. Heavy-Duty Engine Exhaust Emissions Standards

a. FTP Standards[84]

The emission standards finalized today for heavy-duty engines are summarized in Table III.C–1. For reasons explained below, the phase-in schedule for these standards differs from the proposed schedule. We are also finalizing an incentive provision to encourage the early introduction of engines meeting these new standards. This incentive provision is explained in section III.D. In addition, we have altered our Averaging, Banking, and Trading (ABT) provisions from what was proposed. The final ABT provisions are discussed in detail in section VI.

TABLE III.C–1.—FULL USEFUL LIFE HEAVY-DUTY ENGINE EXHAUST EMISSIONS STANDARDS AND PHASE-INS FOR INCOMPLETE VEHICLES

		Standard (g/bhp-hr)	Phase-In by Model Year[a]			
			2007	2008	2009	2010
Diesel	NO_X	0.20	50%	50%	50%	100%
	NMHC	0.14	50%	50%	50%	100%
	PM	0.01	100%	100%	100%	100%
Gasoline	NO_X	0.20	0%	50%	100%	100%
	NMHC	0.14	0%	50%	100%	100%
	PM	0.01	0%	50%	100%	100%

[a] Percentages represent percent of sales.

With respect to PM, this new standard represents a 90 percent reduction for most heavy-duty diesel engines from the current PM standard. The current PM standard for most heavy-duty engines, 0.10 g/bhp-hr, was implemented in the 1994 model year; the PM standard for urban buses implemented in that same year was 0.05 g/bhp-hr; these standards are not changing when other standards change in the 2004 model year timeframe. The new PM standard of 0.01 g/bhp-hr being finalized today is projected to require the addition of highly efficient PM traps to diesel engines, including those diesel engines used in urban buses; it is not expected to require the addition of any new hardware for gasoline engines.

With respect to NMHC and NO_X, these new standards represent significant reductions from the 2004 diesel engine standard which is either 2.4 g/bhp-hr NO_X+NMHC, or 2.5 g/bhp-hr NO_X+NMHC with a cap on NMHC of 0.5 g/bhp-hr. We generally expect that 2004 diesel engines will meet those standards with emission levels around 2.2 g/bhp-hr NO_X and 0.2 g/bhp-hr NMHC. Like the PM standard, the new NO_X standard is projected to require the addition of a highly efficient NO_X emission control system to diesel engines which, with help from the PM trap, will need to be optimized to control NMHC emissions. For gasoline

[83] See Chapter IV.A of the final Tier 2 Regulatory Impact Analysis, contained in Air Docket A–97–10, and McDonald, Joseph, and Jones, Lee, ''Demonstration of Tier 2 Emission Levels for Heavy Light-Duty Trucks,'' SAE 2001–01–1957.

[84] The Phase 1 heavy-duty rule recently promulgated by EPA specified two supplemental sets of standards for heavy-duty diesel engines. (See 65 FR 59896, October 6, 2000.) Manufacturers of heavy-duty diesel engines must meet these supplemental standards, the Supplemental Emission Test (SET, formerly referred to as the Supplemental Steady-State (SSS) test) and the Not-to-Exceed (NTE) standards, beginning in model year 2007, in addition to meeting the preexisting standards, which must be met using the preexisting federal test procedure (FTP). For the purposes of this preamble, we refer to the standards met using the preexisting FTP as the FTP standards, though the SET and NTE test procedures have now been added to the regulations establishing the various federal test procedures for heavy-duty diesel engines.

engines, the 2005 model year standard recently finalized in the Phase 1 heavy-duty rule is 1.0 g/bhp-hr NO_X+NMHC. (See 65 FR 59896, October 6, 2000.) There is a direct trade off between NO_X and NMHC emissions with a gasoline engine, but we would generally expect NO_X levels over 0.5 g/bhp-hr and NMHC levels below that. Regardless of the NO_X and NMHC split, today's standards represent significant reductions for 2008 and later engines that will require substantial improvement in the effectiveness of heavy-duty gasoline emission control technology.

We proposed a new formaldehyde standard of 0.016 g/bhp-hr for both heavy-duty diesel and gasoline engines. However, we have decided not to finalize those standards. We proposed the formaldehyde (HCHO) standard because it is a hazardous air pollutant that is emitted by heavy-duty engines and other mobile sources. In the proposal, we stated our belief that formaldehyde emissions from gasoline and diesel engines are and will remain inherently low, but having the standard would ensure that excess emissions would not occur. Several commenters took issue with our proposed standard claiming that the benefits were nonexistent, that we should address toxic emissions in our toxics rulemaking, and that we had shown neither its technological feasibility nor its measurability. After further consideration we do believe that the proposed formaldehyde standard is not necessary because the NMHC standard we are promulgating today will almost certainly result in formaldehyde emissions well below our proposed formaldehyde standard. As a result, other comments on this issue such as those concerning technological feasibility and measurability are no longer relevant to this rule. We will continue to evaluate this issue to ensure that formaldehyde emissions do not become a problem in the future and may take action to consider standards if warranted.

We believe a phase-in of the diesel NO_X standard is appropriate. With a phase-in, manufacturers are able to introduce the new technology on a portion of their engines, thereby gaining valuable experience with the technology prior to implementing it on their entire fleet. Also, we are requiring that the NO_X, and NMHC standards be phased-in together for diesel engines. That is, engines will be expected to meet both of these new standards, not just one or the other. We are requiring this because the standard finalized in the Phase 1 heavy-duty rule is a combined NMHC+NO_X standard. With separate NO_X and NMHC phase-ins, say 50/50/50/100 for NO_X and 100 percent in 2007 for NMHC, the 2.5 gram engines being phased-out would have a 2.5 gram NO_X+NMHC standard and a new 0.14 gram NMHC standard with which to comply. While this could be done, we believe that it introduces unnecessary compliance complexity to the program.

In our NPRM, we requested comment on a range of possible phase-in schedules for NO_X including anything from our primary proposal of 25/50/75/100 percent phase-in to a possible requirement for 100 percent compliance in the 2007 model year. We have determined that a 50/50/50/100 percent phase-in schedule is the most appropriate schedule for several reasons.

Some commenters argued that we should require 100 percent compliance in the 2007 model year because of the 0.20 gram standard was both technologically feasible and critical given the nation's air quality needs. Other commenters were concerned that 100 percent compliance to the 0.20 gram NO_X standard in the first year of the program was ill advised as it would provide little opportunity for industry to ''field test'' new NO_X control technologies. These commenters also expressed concern over workload burdens on industry members needing to redesign all of their new engines and vehicles in one year. Some commenters were concerned that a 25/50/75/100 percent phase-in schedule would introduce competitiveness issues whereby those vehicles equipped with new NO_X control technology may be less attractive to some buyers than vehicles without the technology, making them difficult for manufacturers to sell.

We set standards and implementation schedules based on many factors including technological feasibility, cost, energy, and safety. Considering these factors, we believe that industry should be provided the flexibility of having a phase-in of the new NO_X standard. As discussed in section III.E below, we believe the 0.20 gram NO_X standard is feasible in the 2007 time frame. However, we believe a phase-in is appropriate for a couple of reasons. First, the phase-in will provide industry with the flexibility to roll out the NO_X control technology on only a portion of their fleet. This will allow them to focus their resources on that half of their fleet being brought into compliance in 2007. This ability to focus their efforts will increase both the efficiency and the effectiveness of those efforts. Second, a phase-in allows industry the ability to introduce the new technology on those engines it believes are best suited for a successful implementation which, in turn, provides a valuable opportunity to refine that technology on only a portion of their product line prior to the next push toward full implementation.

Another concern with respect to our proposed phase-in schedule was raised by several commenters and pertains to its interaction with the final implementation schedule for the new supplemental requirements (the Supplemental Emission Test, SET, and the Not-to-Exceed, NTE). These requirements, finalized in the Phase 1 heavy-duty final rule, will be implemented in the 2007 model year on all heavy-duty diesel engines. (See 65 FR 59896, October 6, 2000.) Under a 25/50/75/100 percent phase-in schedule of new diesel engine emission requirements, 25 percent of engines in the 2007 model year would meet 0.20 and 0.01 g/bhp-hr NO_X and PM, while 75 percent would meet 2.5 and 0.01 g/bhp-hr NO_X and PM. Further, all of those engines would be required, beginning in the 2007 model year, to meet the supplemental requirements based on the FTP emission standards to which they were certified. A 25/50/75/100 percent phase-in schedule would change the supplemental requirements for those 25 percent of engines in the 2008 model year that would have to change to meet the new 50 percent compliance requirement. This change would be required even though the supplemental requirements on those 25 percent of engines were first implemented only one model year earlier, in model year 2007. Commenters have questioned whether this is consistent with section 202(a)(3)(c) of the Clean Air Act, which requires that standards for heavy-duty vehicles and engines apply for no less than three model years without revision. Under this argument, the supplemental requirements implemented in the 2007 model year must be allowed three model years of stability, meaning that no changes can be required to those standards until the 2010 model year.

The final phase-in schedule, 50/50/50/100 percent, addresses any concerns about violating the stability requirement of the Act and addresses the technology and lead time benefits of a phase-in as discussed above.[85] While this phase-in does not provide certain commenters with their goal of 100 percent implementation of very low NO_X engines in 2007, we believe it is

[85] EPA need not determine, at this time, whether the 25/50/75/100 percent phase-in schedule violates section 202(a)(3)(c), as the 50/50/50/100 percent phase-in schedule clearly does not and is available to all manufacturers.

appropriate for the technology, cost, and other reasons described above. This 50/50/50/100 percent phase-in schedule does provide a more rapid implementation of low NO_X engines and, more importantly, provides more air quality benefits in 2007 than would our proposed phase-in schedule. We are also finalizing provisions that would encourage manufacturers to introduce clean technology, both diesel and gasoline, earlier than required in return for greater flexibility during the later years of our phase-in. These optional early incentive provisions are analogous to those included in our light-duty Tier 2 rule and are discussed in more detail in section III.D. We have also revised our Averaging, Banking, and Trading program to increase flexibility as discussed further in section VI.

For gasoline engines, we proposed 100 percent compliance in the 2007 model year. However, since the proposal was published, we have set new standards for heavy-duty gasoline engines that take effect in the 2005 model year. Therefore, the three year stability requirement of the CAA requires that today's new standards not apply until the 2008 model year at the earliest. Further, while we had not proposed a phase-in for gasoline standards, based on comments received we believe that a phase-in should be provided. The phase-in will allow manufacturers to implement improved gasoline control technologies on their heavy-duty gasoline engines in the same timeframe as they implement those technologies on their Tier 2 medium-duty passenger vehicles (MDPV). This consistency with Tier 2 is discussed in more detail below in section III.C.2 on vehicle standards. Note that the gasoline engine phase-in schedule is the same as but separate from the gasoline vehicle phase-in schedule discussed below. As we have done for diesel engines, we have also revised our Averaging, Banking, and Trading program for gasoline engines to increase flexibility as discussed further in section VI.

For a discussion of why we believe these standards are technologically feasible in the time frame required, refer to section III.E below and for a more detailed discussion refer to the RIA contained in the docket. The averaging, banking, and trading (ABT) provisions associated with today's standards are discussed in Section VI of this preamble. The reader should refer to that section for more details.

b. Supplemental Provisions for HD Diesel Engines (SET & NTE)

In addition to the new FTP standards for HD diesel engines contained in today's final action, we are also finalizing the supplemental emission standards we proposed to apply to the new HDDEs, with a number of changes as discussed in this section. The supplemental provisions will help ensure that HD diesel engines achieve the expected in-use emission reductions over a wide range of vehicle operation and a wide range of ambient conditions, not only the test cycle and conditions represented by the traditional FTP. The Agency has historically relied upon the FTP and the prohibition of defeat devices to ensure that HDDE emission control technologies which operate during the laboratory test cycle continue to operate in-use. The supplemental provisions are a valuable addition to the FTP and the defeat device prohibition to ensure effective in-use emission control. The supplemental provisions for HD diesel engines consist of two principal requirements, the supplemental emission test and associated standards (SET),[86] and the not-to-exceed test and associated standards (NTE). The supplemental emission standards finalized today for heavy-duty diesel engines are summarized in Table III.C–2.

TABLE III.C–2.—FULL USEFUL LIFE HEAVY-DUTY DIESEL ENGINE SUPPLEMENTAL EXHAUST EMISSIONS STANDARDS

Supplemental test	Requirements for NO_X, NMHC, PM
Supplemental emission test.	1.0 × FTP standard (or FEL).
Not-to-exceed test	1.5 × FTP standard (or FEL).

The SET and NTE test procedures were recently adopted for 2007 on-highway HD diesel engines. (See 65 FR 59896, October 6, 2000.) In the recent HD Phase 1 rulemaking which promulgated the SET and NTE, the supplemental provisions were finalized in the context of the emission control technology expected to be used to meet the 2004 FTP standards, *i.e.,* injection timing strategies and cooled EGR. In this final action, we are finalizing a number of changes to the supplemental provisions to address specific technical issues raised by commenters and which result from the expected application of high efficiency exhaust emission control devices on HD diesel engines and vehicles to meet today's new standards. These changes are minor in nature and will not impact the emission reductions we expect from the Phase 2 standards. These changes are discussed in the following sections. Additional discussion regarding the supplemental provisions for HDDEs is contained in the RIA and the Response to Comments (RTC) for this final rule, as well as in Section III.E of this preamble (''Feasibility of the New Engine and Vehicle Standards'').

i. Supplemental Emission Test

We are finalizing supplemental emission test provisions for HD diesel engines and vehicles certified to the new FTP standards contained in this final rule. The SET emission standard is equal to 1.0 times the FTP standard or FEL for HD diesel engines. Emission results from this test must meet the numerical standards for the FTP. The SET requirements are phased-in beginning with the 2007 model year, consistent with the phase-in of the new FTP standards. The supplemental emission test duty cycle consists of 13 modes of speed and torque, primarily covering the typical highway cruise operating range of heavy-duty diesel engines. The emission results from each of the modes are weighted by defined factors in the regulations, and the final weighted emission value for each pollutant must meet the SET standard. In addition, several of the 13 individual modes are in the NTE control zone, and must meet the applicable NTE requirements. The SET test is a laboratory test performed using an engine dynamometer under the same conditions which apply to the FTP, as specified in the regulations. (See 40 CFR 86.1360.)

The regulations for the SET in model year 2007 as they apply to the 2004 FTP emission standards contain additional steady-state test point emission limits. The Phase 1 supplemental requirements define a ''Maximum Allowable Emission Limit'' (MAEL) which the engines must comply with. The Phase 1 regulations allowed EPA to randomly select up to three steady-state test points prior to certification which the manufacturer would test to show compliance with the MAEL. These test points are referred to as ''mystery points''. In this final rule we have eliminated the MAEL for engines certified to the Phase 2 standards. The MAEL assures that an engine is calibrated to maintain emission control similar to the SET test under steady state conditions across the engine map, not just at the pre-defined 13 test points

[86] In the Phase 1 rulemaking, the Supplemental Emission Test was referred to as the supplemental steady state test. As discussed in the Phase 1 rule, the supplemental steady state test is based on and is consistent with the European Commissions ''EURO III ESC'' test. (See 65 FR 59915.) In this final rule we have renamed the supplemental steady state test the Supplemental Emission Test (SET).

which comprise the SET test. For Phase 1 engines the MAEL was necessary to ensure this potential for gaming did not occur because the difference between the FTP standard and the NTE standard could be large, for example, 0.625 g/bhp-hr for NMHC + NO_X. However, for Phase 2 engines the NTE requirements are a mere 0.10 g/bhp-hr NO_X greater than the FTP standard. Considering this small increment, we have eliminated the MAEL for Phase 2 engines because it is redundant with the NTE. For the same reasons, we have eliminated the certification ''mystery points'' for engines complying with today's diesel engine standards.

ii. Not-to-Exceed

We are also finalizing revisions to the not-to-exceed emission standards for HD diesel engines certified to the Phase 2 FTP standards contained in this final rule. These NTE procedures apply under engine operating conditions within the range specified in the NTE test procedure that could reasonably be expected to be seen in normal vehicle operation and use. (See 40 CFR 86.1370.) The NTE procedure defines limited and specific engine operating regions (*i.e.,* speed and torque conditions) and ambient operating conditions (*i.e.,* altitude, temperature, and humidity conditions) which are subject to the NTE emission standards. Emission results from this test procedure must be less than or equal to 1.5 times the FTP standards (or FEL) for NO_X, NMHC, and PM. The new NTE requirements are phased-in starting with the 2007 model year, consistent with the new FTP standards.

The Not-To-Exceed (NTE) provisions were recently finalized for HDDEs certified to the 2004 FTP emission standards with implementation beginning in model year 2007. (See 65 FR 59896, October 6, 2000.) The NTE approach establishes an area (the ''NTE control area'') under the torque curve of an engine where emissions must not exceed a specified value for any of the regulated pollutants.[87] The NTE requirements would apply under engine operating conditions that could reasonably be expected to be seen in normal vehicle operation and use which occur during the conditions specified in the NTE test procedure. (See 40 CFR 86.1370.) This test procedure covers a specific range of engine operation and ambient operating conditions (*i.e.,* temperature, altitude, and humidity). The NTE control area, emissions standards, ambient conditions and test procedures for HDDEs are described in the regulations.

The NTE multiplier promulgated in the previous final rulemaking for HD diesel engines certified to the 2004 FTP standards is 1.25 × FTP standard (*e.g.,* 1.25 × 2.5g/bhp-hr NMHC+NO_X and 1.25 × 0.1 g/bhp-hr PM). We believe the NTE cap finalized today (1.5 × the Phase 2 FTP standards or FEL) allows sufficient headroom above the FTP standard to accommodate the technical challenges necessary to meet the NTE standard which must be met over a broader range of ambient conditions, a shorter time period, and a wider variety of operating conditions, than the FTP or the SET. While the 1.5 NTE multiplier we are finalizing is greater than what we proposed, in absolute terms the NTE requirement for Phase 2 engines is much smaller than for Phase 1 engines (*i.e.,* the magnitude of the cap in g/bhp-hr emissions), and the Phase 2 NTE cap will help ensure the emission reductions we expect from the Phase 2 standards will occur in-use. The NTE requirements have been modified from what we proposed based on our assessment of the emission performance of the exhaust emission control devices that will be used to meet the new FTP standards (*e.g.,* catalyzed particulate traps and NO_X adsorbers). Under the program finalized today, an NTE limit of 1.5 × the NO_X FEL would apply to 2007 and later model year engines certified with FELs less than 1.5 g/bhp-hr NO_X. As discussed throughout this notice, the stringent 2007 PM standard, 0.01 g/bhp-hr, can be met with the use of catalyzed particulate traps. Because of the very low particulate matter emissions which will be emitted by engines meeting the PM standard, this final rule also establishes a minimum PM NTE requirement for engines certified with FELs below 0.01 g/bhp-hr at 1.5 × the FTP standard, not the FEL. Based on our assessment of the expected exhaust emission control devices and their performance, the NTE standard of 1.5 × FTP standard is both technologically feasible and appropriate. A detailed discussion of the feasibility of the NTE requirements is contained in the RIA for this final rule.

Today's action allows the NTE deficiency provisions we recently finalized for 2007 HDDEs meeting the 2004 FTP standards to be used by HDDEs meeting the standards contained in today's final rule (See 40 CFR 86.007–11(a)(4)(iv) in the regulations, and 65 FR 59914 of the Phase 1 rule for a detailed discussion of the NTE deficiencies.). These deficiency provisions are similar to the deficiency provisions which currently apply to LD and HD on-board diagnostic systems. This will allow the Administrator to accept a HDDE as compliant with the NTE even though some specific requirements are not fully met. This provision will be available for manufacturers through 2013, though it will be more limited after 2009 as described below. In the Phase 1 rule, the Agency finalized deficiency provisions which were allowed through model year 2009. In this rule, it is appropriate to extend the availability of the NTE deficiency provisions beyond 2009. Given the nature of the phase-in requirements in this rule, manufacturers may be introducing new engine families certified to the Phase 2 NO_X and NMHC standards as late as model year 2010, and these families may need limited access to a NTE deficiency for a few years after their introduction. Therefore, we have extended the availability of deficiencies through model year 2013, but with one constraint. Given the considerable lead time available, we have limited the number of deficiencies to three per engine family for 2010 through 2013.

In addition, we have made a number of changes to the NTE requirements to address specific technical issues which arise from the application of high efficiency exhaust emission control devices to HDDEs. These provisions will only be summarized here. A detailed discussion is contained in the RIA and the RTC for this final rule. These changes include: engine start-up provisions; exhaust emission control device warm-up provisions; modifications of the NTE control zone; and adjustments to the NTE minimum emissions sample time.

Under this final rule, the NTE requirements will not apply during engine start-up conditions. EPA intended to include the provision excluding start-up provisions from the NTE requirements under the Phase 1 rulemaking, and it was discussed in the preamble for both the Phase 1 proposal and final rule. However, this provision was inadvertently left out of the regulations. We have corrected this in today's rule for both Phase 1 and Phase 2 engines. In addition, with the application of advanced exhaust emission control devices, an exhaust emission control device warm-up provision is a necessary criterion for the NTE. Specifically, until the exhaust gas temperature on the outlet side of the exhaust emission control device(s)

[87] Torque is a measure of rotational force. The torque curve for an engine is determined by an engine ''mapping'' procedure specified in the Code of Federal Regulations. The intent of the mapping procedure is to determine the maximum available torque at all engine speeds. The torque curve is merely a graphical representation of the maximum torque across all engine speeds.

achieves 250 degrees Celsius, the engine is not subject to the NTE. Additional discussion of this provision is contained in the RIA.

We have made three changes to the NTE engine control zone. First, we have expanded the NTE engine control zone for engines certified to the new 0.01 g/bhp-hr PM standard. The NTE requirements as specified in the regulations for engines certified to the 2004 FTP standards provide specific ''PM carve-outs'' to the NTE control zone. These carve-outs define an area of the engine operating regime (speed and torque area) to which the NTE does not apply for PM emissions. (See 65 FR 59961.) The PM only carve-outs were specified because, under certain engine operating regions, the NTE requirements for PM could not be met with the technology projected to be used to meet the 2004 FTP standards. However, as discussed in the RIA, the advanced PM trap technology that will be used to meet the PM standard contained in today's final rule is very efficient at controlling PM emissions across the entire NTE control zone. Due to the high PM reduction capabilities of catalyzed PM traps, there is no need for the PM specific carve-outs. Therefore, we have eliminated the NTE PM carve-outs for Phase 2 engines. Second, we have added a provision which would allow a manufacturer to exclude defined regions of the NTE engine control zone from NTE compliance if the manufacturer could demonstrate that the engine, when installed in a specified vehicle(s), is not capable of operating in such regions. Finally, we have added a provision which would allow a manufacturer to petition the Agency to limit testing in a defined region of the NTE engine control zone during NTE testing. This optional provision would require the manufacturer to provide the Agency with in-use operation data which the manufacturer could use to define a single, continuous region of the NTE control zone. This single area of the control zone must be specified such that operation within the defined region accounts for 5 percent or less of the total in-use operation of the engine, based on the supplied data. Further, to protect against gaming by manufacturers, the defined region must generally be elliptical or rectangular in shape, and share a boundary with the NTE control zone. If approved by EPA, the regulations then disallow testing with sampling periods in which operation within the defined region constitutes more than 5.0 percent of the time-weighted operation within the sampling period.

We have also changed the minimum emissions sample time approach for NTE testing to address technical issues specific to the advanced exhaust emission control devices anticipated to be used to meet the NTE requirements. We proposed that the minimum emission sample time for the NTE was 30 seconds, which is what we recently finalized for engines certified to the Phase 1 standards. This short sample time was sufficient to ensure that momentary spikes in emissions (*e.g.,* such as could occur in a two or three second time frame) could not be isolated for determining compliance with the NTE (*e.g.,* an NTE test must be no shorter than a 30 second average). However, the use of highly efficient exhaust emission control devices complicates the minimum sample time requirements because of the potential for short-duration emission increases during regeneration events. We have adjusted the minimum sample time requirements to address this issue as follows (a detailed discussion of the need for this change is contained in the RIA). The regulations specify that the NTE sample time can be as short as 30 seconds provided no regeneration events occur within the sample period. However, if a regeneration event is included in the sample time, the sample time must include the period of time from the start of one regeneration event to the start of the next regeneration event, for each regeneration included in the sample. A regeneration event is determined by the engine manufacturer. This second provision regarding the minimum NTE sample time also cannot be shorter than 30 seconds. This sample time provision applies to any HDDE engine equipped with an exhaust emission control device which requires discreet regeneration events, regardless of the nature of the regeneration (*e.g.,* NO_X regeneration, desulfation).

c. Crankcase Emissions Control

Crankcase emissions are the pollutants that are emitted in the gases that are vented from an engine's crankcase. These gases are also referred to as ''blowby gases'' because they result from engine exhaust from the combustion chamber ''blowing by'' the piston rings into the crankcase. These gases are vented to prevent high pressures from occurring in the crankcase. Our emission standards have historically prohibited crankcase emissions from all highway engines except turbocharged heavy-duty diesel engines. The most common way to eliminate crankcase emissions has been to vent the blowby gases into the engine air intake system, so that the gases can be recombusted. We made the exception for turbocharged heavy-duty diesel engines in the past because of concerns about fouling that could occur by routing the diesel particulates (including engine oil) into the turbocharger and aftercooler. Our concerns are now alleviated by newly developed closed crankcase filtration systems, specifically designed for turbocharged heavy-duty diesel engines. These new systems (discussed more fully in Section III.E below and in Chapter III of the Final RIA) are already required for new on-highway diesel engines under the EURO III emission standards.

In today's action, we are eliminating the exception for turbocharged heavy-duty diesel engines starting in the 2007 model year. Manufacturers will be required to control crankcase emissions from these engines, preferably by routing them back to the engine intake or to the exhaust stream upstream of the exhaust emission control devices. However, in response to the manufacturers' comments, we are finalizing the crankcase control requirement to allow manufacturers to treat crankcase emissions from these engines the same as other exhaust emissions (*i.e.,* we provide a performance requirement and leave the design to the manufacturer). Under this allowance, manufacturers could potentially discharge some or all of the crankcase emissions to the atmosphere, but only if they were able to keep the combined total of the crankcase emissions and the other exhaust emissions below the applicable exhaust emission standards. They could do this by routing the crankcase gases into the exhaust stream downstream of the exhaust emission control devices, or by continuing the current practice of venting the gases to the engine compartment. But, they could take either of these approaches only if they make sure that the combined total of the crankcase emissions and the other exhaust emissions are below the applicable exhaust emission standards. Also, the manufacturer would have to ensure that the crankcase emissions were readily measurable during laboratory and in-use field testing.[88] Despite this allowance made at the request of commenters, given the low levels of today's final standards we believe that manufacturers will have to close the crankcases of all of their

[88] During laboratory testing, the crankcase emissions would need to be vented in a controlled manner so that they could be routed into the dilution tunnel to ensure their proper measurement and inclusion in the tested emission level.

engines by either routing the crankcase emissions into the engine intake or by routing them into the exhaust upstream of the exhaust emission control devices.

d. On-Board Diagnostics (OBD)

The Phase 1 heavy-duty final rule put into place OBD requirements for heavy-duty diesel and gasoline engines weighing 14,000 pounds or less. (See 65 FR 59896, October 6, 2000.) In that rule, the OBD thresholds for malfunction identification are based on multiples of the applicable FTP emission standards to which the engine is certified. Given the structure of the 2004 FTP emission standards (2005 FTP emission standards for gasoline engines), which are combined NMHC+NO_X standards, the OBD thresholds are based on a multiple of the combined FTP standards. However, the structure of the 2007 FTP standards (2008 for gasoline engines) finalized today is not a combined NMHC+NO_X standard, but is instead a separate NO_X and a separate NMHC standard.

Therefore, today's final rule is revising the existing section of the regulations to link OBD thresholds to whatever the appropriate standards are whether they are the combined FTP standards or the new separate FTP standards finalized today. This is consistent with the intent of our OBD requirements since inception—that the OBD thresholds be based on the FTP standards to which the vehicle or engine has been certified.

We are also revising the phase-in for the OBD requirements finalized in the Phase 1 rule. (See 65 FR 59896.) In that rule, OBD systems were required to phase-in on a schedule of 60/80/100 percent beginning in the 2005 model year. At least one commenter claimed that the OBD phase-in may require multiple changes to OBD systems in consecutive years, because OBD systems are tied to the FTP standards to which they are certified.[89] We have decided, for diesel engine OBD systems, to revise the 60/80/100 percent phase-in to 50/50/100 percent beginning in the 2005 model year. This revised phase-in not only alleviates the commenter's concerns, but also makes the OBD phase-in consistent with the implementation of new emission standards.

In addition, we have decided, for gasoline engine OBD systems, to revise the 60/80/100 percent phase-in to 60/80/80/100 percent beginning in the 2005 model year.[90] As with the new diesel OBD phase-in, this gasoline engine OBD phase-in alleviates the commenter's concerns, and it also makes the gasoline OBD phase-in more consistent with the implementation of new emission standards while maximizing the percentage of gasoline engines designed to meet the OBD requirements.

We also received comments suggesting that we commit to making any necessary changes to the OBD requirements based on the outcome of future rulemaking efforts by the California Air Resources Board (ARB). While we cannot make any such commitment, nor do we believe the commenter truly would want us to commit to making changes solely because ARB made changes, we do intend to continue our normal practice of working closely with ARB and harmonizing our OBD requirements where appropriate. Of course, any changes to our OBD requirements could only be done via rulemaking.[91]

2. Heavy-Duty Vehicle Exhaust Emissions Standards[92]

a. FTP Standards

The emission standards being finalized today for heavy-duty gasoline vehicles are summarized in Table III.C–3. We have already required that all complete heavy-duty gasoline vehicles, whether for transporting passengers or for work, be chassis certified. (See 65 FR 59896, October 6, 2000.) Current federal regulations do not require that complete diesel vehicles over 8,500 pounds be chassis certified; instead, our regulations have traditionally required certification of their engines. Today's final rule allows, as an option, chassis certification of complete heavy-duty diesel vehicles under 14,000 pounds. This option is discussed in more detail later in this section.

The Tier 2 final rule created a new vehicle category called ''medium-duty passenger vehicles.'' [93] These vehicles, both gasoline and diesel, are required to meet requirements of the Tier 2 program, which carries with it a chassis certification requirement. As a result, diesel medium-duty passenger vehicles must certify using the chassis certification test procedure.[94] Today's heavy-duty vehicle based standards, or chassis standards, for 2008 and later model year heavy-duty gasoline vehicles would apply to the remaining complete gasoline vehicles under 14,000 pounds and those complete diesel vehicles under 14,000 pounds choosing the chassis certification option; these complete vehicles are typically used for commercial, non-passenger applications. The standards shown in Table III.C–3 are, we believe, comparable in stringency to the diesel and gasoline engine standards shown in Table III.C–1.

[89] EPA does not believe there would be any legal stability concern even if we had kept the OBD phase-in as finalized in the Phase 1 rule. However, EPA agrees with the commenter that the phase-in as finalized in the Phase 1 rule would have complicated compliance unnecessarily.

[90] For those manufacturers choosing compliance Options 1 or 2 as part of the Phase 1 program, the gasoline engine OBD phase-in will become 40/60/80/80/100 percent beginning in model year 2004. (See 65 FR 59896, October 6, 2000.)

[91] This comment also pertained to gasoline vehicle-based OBD systems. Our statements made here pertain to those requirements as well but are not repeated below in section III.2.c.

[92] As noted above, vehicle and engine standards apply to all vehicles and engines, even if they are alternative fueled vehicles and engines.

[93] Medium-duty passenger vehicles are defined as any complete vehicle between 8,500 and 10,000 pounds GVWR designed primarily for the transportation of persons. The definition specifically excludes any vehicle that (1) has a capacity of more than 12 persons total or, (2) is designed to accommodate more than 9 persons in seating rearward of the driver's seat or, (3) has a cargo box (*e.g.,* pick-up box or bed) of six feet or more in interior length. (See the Tier 2 final rulemaking, 65 FR 6698, February 10, 2000.)

[94] The Tier 2 final rule did make a limited allowance for engine certification of diesel MDPVS through the 2007 model year. The reader should refer to the Tier 2 final rule for details on that allowance. (See 65 FR 6750, February 10, 2000.)

TABLE III.C–3.—FULL USEFUL LIFE HEAVY-DUTY VEHICLE EXHAUST EMISSIONS STANDARDS AND PHASE-INS FOR COMPLETE VEHICLES [a]

[Grams/mile]

Weight range (GVWR)		Standard (g/mi)	Phase-in by model year [b]	
			2008	2009
8,500 to 10,000 lbs	NO_X	0.2		
	NMHC	0.195		
	HCHO	0.032		
	PM	0.02		
10,001 to 14,000 lbs	NO_X	0.4	50%	100%
	NMHC	0.230		
	HCHO	0.040		
	PM	0.02		

[a] Does not include medium-duty passenger vehicles.
[b] Percentages represent percent of sales.

These NO_X standards represent a 78 percent reduction and a 60 percent reduction from the standards for 8,500–10,000 pound and 10,000–14,000 pound vehicles, respectively, finalized for the 2005 model year. The 2005 model year standards are equivalent to the California LEV–I NO_X standards of 0.9 g/mi and 1.0 g/mi, respectively. The NO_X standards shown in Table III.C–3 are consistent with the CARB LEV–II NO_X standards for low emission vehicles (LEVs) in each respective weight range. The NO_X standard is slightly higher for the 10,000 to 14,000 pound vehicles for several reasons: these vehicles are tested at a heavier payload; they generally have a larger frontal area which creates more drag on the engine and requires it to work harder; and their in-use duty cycle tends to be more severe. The increased weight results in using more fuel per mile than vehicles tested at lighter payloads; therefore, they tend to emit slightly more grams of pollutant per mile than lighter vehicles.[95]

The NMHC standards finalized today represent a 30 percent reduction from the 2005 standards for 8500–10,000 and 10,000–14,000 pound vehicles. The 2005 model year standards require such vehicles to meet NMHC standard levels of 0.28 g/mi and 0.33 g/mi, respectively (equal to the California LEV–I nonmethane organic gases (NMOG) standard levels). These new NMHC standards are consistent with the CARB LEV–II NMOG standards for LEVs in each respective weight class. The NMHC standard for 10,000–14,000 pound vehicles is higher than for 8,500–10,000 pound vehicles for the same reason as stated above for the higher NO_X standard for such vehicles.

The formaldehyde (HCHO) standards shown in Table III.C–3 are not the standards we proposed. The standards we are finalizing are equivalent to the California LEV–II LEV category standards. This approach is being taken to maintain consistency with the approach taken on NO_X and NMHC standards. Although we are not finalizing formaldehyde standards for engine certified systems, because all the exhaust emission standards for complete vehicles are consistent with the CARB LEV II standards, we believe it is appropriate to maintain the formaldehyde standard for gasoline vehicles. Formaldehyde is a hazardous air pollutant that is emitted by heavy-duty vehicles and other mobile sources, and we are finalizing these formaldehyde standards to prevent excessive formaldehyde emissions. These standards are especially important for any methanol-fueled vehicles because formaldehyde is chemically similar to methanol and is one of the primary byproducts of incomplete combustion of methanol. Formaldehyde is also emitted by vehicles using petroleum fuels (i.e., gasoline or diesel fuel), but to a lesser degree than is typically emitted by methanol-fueled vehicles. We expect that petroleum-fueled vehicles able to meet the NMHC standards should comply with the formaldehyde standards with large compliance margins. Based upon our analysis of the similar Tier 2 standards for passenger vehicles, we believe that formaldehyde emissions from petroleum-fueled vehicles when complying with the new PM, NMHC and NO_X standards should be as much as 90 percent below the standards.[96] Thus, to reduce testing costs, we are finalizing a provision that permits manufacturers of petroleum-fueled vehicles to demonstrate compliance with the formaldehyde standards based on engineering analysis. This provision requires manufacturers to make a demonstration in their certification application that vehicles having similar size and emission control technology have been shown to exhibit compliance with the applicable formaldehyde standard for their full useful life. This demonstration is expected to be similar to that required to demonstrate compliance with the Tier 2 formaldehyde standards.

The PM standard is 80 percent lower than the CARB LEV–II LEV category PM standard of 0.12 g/mi, which actually applies only to diesel vehicles. Note that the PM standard shown in Table III.C–3 represents not only a stringent PM level, but a new standard for federal HDVs where none existed before. Both the California LEV II program for heavy-duty diesel vehicles and the federal Tier 2 standards for over 8,500 pound gasoline and diesel vehicles designed for transporting passengers contain PM standards. The PM standard finalized today is consistent with the light-duty Tier 2 bins 7 and 8 level of 0.02 g/mi.

The timing for our final gasoline vehicle standards differs from what we had proposed. Our proposal had no phase-in, requiring 100 percent compliance in the 2007 model year. However, since the proposal was published, we have set new standards for heavy-duty gasoline complete vehicles that take effect in the 2005 model year. Therefore, the three year stability requirement of the CAA requires that today's new standards not apply until the 2008 model year at the earliest. Further, based on comments

[95] Engine standards, in contrast, are stated in terms of grams per unit of work rather than grams per mile. Therefore, engine emission standards need not increase with weight because heavier engines do not necessarily emit more per unit of work produced. In contrast, heavier vehicles, due to their greater mass, tend to emit more per mile due to the increased load placed on the engine which requires the engine to do more work to travel each mile.

[96] See the Tier 2 Response to Comments document contained in Air Docket A–97–10.

received, we believe that a phase-in should be provided. The phase-in will allow manufacturers to implement improved gasoline control technologies on their heavy-duty gasoline vehicles in the same timeframe as they implement those technologies on their Tier 2 medium-duty passenger vehicles (MDPV). The MDPVs generally use the same engines and emission control systems as do the heavy-duty versions of those vehicles. MDPVs must comply with our light-duty Tier 2 program at 50 percent beginning in the 2008 model year and then 100 percent in the 2009 model year. As a result of this MDPV phase-in, and the stability requirements of the CAA, and because we believe it provides the greatest emission control considering costs, we are finalizing a gasoline phase-in of 50/100 percent beginning in the 2008 model year. Commenters suggested a 40/80/100 percent phase-in beginning in the 2008 model year, but we believe that a 50/100 percent phase-in allows appropriate leadtime and synergy with the MDPV requirements of our Tier 2 program. It is worth clarifying that this phase-in excludes California complete heavy-duty vehicles, which are already required to be certified to the California emission standards. It also excludes vehicles sold in any state that has adopted California emission standards for complete heavy-duty vehicles. It would be inappropriate to allow manufacturers to ''double-count'' the vehicles by allowing them to count those vehicles both as part of their compliance with this phase-in and for compliance with California requirements. We would handle heavy-duty engines similarly if California were to adopt different emission standards than those being established by this rule.

We are also finalizing provisions that would encourage manufacturers to introduce clean technology earlier than required in return for greater flexibility during the later years of our phase-in. These optional early incentive provisions are analogous to those included in our light-duty Tier 2 rule and are discussed in more detail in section III.D.

As we have done for diesel and gasoline engines, we have revised our Averaging, Banking, and Trading program for gasoline vehicles and engines to increase flexibility as discussed further in section VI. The reader should refer to that section for more details. Note that the gasoline vehicle phase-in schedule is the same as but separate from the gasoline engine phase-in schedule discussed above. For a discussion of why we believe these standards are technologically feasible in the time frame required, refer to section III.E below, and for a more detailed discussion refer to the RIA contained in the docket.

We are also allowing complete heavy-duty diesel vehicles under 14,000 pounds to certify to the heavy-duty vehicle standards. The issue of chassis certification of diesels was raised as part of the Phase 1 rule. At that time, manufacturers expressed little interest in such a provision. Because the heavy-duty diesel industry is largely not a vertically-integrated industry, in that one company makes the engine and another makes the vehicle, chassis certification is not an immediately attractive or practical option for diesel engine manufacturers. Nonetheless, some manufacturers have begun to express interest in diesel chassis certification.[97] Also, the California Air Resources Board allows complete diesel vehicles to chassis certify. We like the idea of diesel chassis certification because it allows us to more easily evaluate such vehicles in-use. A chassis certified diesel could be acquired easily by EPA and tested in its vehicle configuration without the need to remove the engine for an engine test.

Therefore, while we fully expect that manufacturers will continue to certify the engines intended for complete diesel vehicles to the engine standards, we will allow the option to chassis certify such vehicles. Any chassis-certified complete diesel vehicles must meet the applicable Phase 2 emission standards for complete vehicles (i.e., this option is not available to diesels certified to the Phase 1 standards). In addition, while complete diesel vehicles would count against the phase-in requirements for diesel engines, they would not be allowed in the Averaging, Banking, and Trading program. Therefore, a chassis-certified diesel vehicle can neither use nor earn ABT credits, but counts as part of the 50 percent phase-in. Further, complete diesels choosing the chassis certification option would be required to comply with our federal OBD vehicle-based requirements for monitoring of exhaust emission control devices, even if choosing the option to demonstrate OBD compliance using the California OBD II requirements. Lastly, diesel vehicles choosing this option would be certified under subpart S which applies to chassis certified complete vehicles, but the evaporative emissions provisions of that subpart would not apply for diesel vehicles.

[97] See memorandum from Todd Sherwood to Air Docket A–99–06, dated December 6, 2000, Item #IV–E–47.

b. Supplemental Federal Test Procedure

We did not propose new supplemental FTP (SFTP) standards for heavy-duty vehicles. The SFTP standards control off-cycle emissions in a manner somewhat analogous to the NTE requirements for engines. We believe that the SFTP standards are an important part of our light-duty program just as we believe the NTE requirements will be an important part of our heavy-duty diesel engine program. Although we did not propose SFTP standards for heavy-duty vehicles, we stated an intention to do so via a separate rulemaking. We requested comment on such an approach, and on appropriate SFTP levels for heavy-duty vehicles along with supporting data.

We received unanimous support from industry commenters to address SFTP standards for heavy-duty vehicles in a separate rulemaking. In our Tier 2 final rule, we stated that we are currently contemplating a new SFTP rulemaking that would consider ''Tier 2'' SFTP standards for all Tier 2 vehicles, including MDPVs. California is also interested in developing more stringent SFTP standards within the context of their LEV II program and we are coordinating with California on these new SFTP standards. Given our concern over ''off cycle'' emissions, we believe it is appropriate that SFTP standards apply to all chassis certified vehicles, heavy-duty and light-duty. As part of the SFTP rule being contemplated, we expect to examine not only those issues stated in the Tier 2 rule (e.g., the SFTP test cycles and different SFTP standards for different vehicles sizes) but also the issue of heavy-duty SFTP standards.

c. On-Board Diagnostics (OBD)

The Phase 1 heavy-duty rule finalized OBD requirements for heavy-duty diesel engines, heavy-duty gasoline engines, and heavy-duty complete vehicles weighing 14,000 pounds or less. (See 65 FR 59896, October 6, 2000.) In that rulemaking, the final regulatory language stated the OBD catalyst thresholds for complete vehicles as multiples of a combined NMHC+NO_X emission standard. However, the emission standards for complete vehicles are not combined, as are the engine standards in that final rule. Therefore, the OBD catalyst thresholds for complete vehicles were not stated properly in the applicable sections of the regulations.

Today's final rule corrects that regulatory error by revising the appropriate regulatory language to link the OBD thresholds to a separate, rather than combined, set of FTP exhaust

emission standards. This is consistent with the Phase 1 heavy-duty proposal which correctly linked the proposed OBD thresholds to the separate FTP exhaust emission standards. (See 64 FR 58472, October 29, 1999.) It is also consistent with the preamble to the Phase 1 final rule, which stated the catalyst monitor threshold correctly. This change makes the OBD thresholds for complete vehicle certifications consistent with the structure used since implementation of the federal OBD requirements. (See 58 FR 9468, February 19, 1993.)

Consistent with the changes already discussed in section III.C.1, we are also revising the phase-in for complete vehicle OBD requirements finalized in the Phase 1 rule. (See 65 FR 59896.) In that rule, OBD systems were required to phase-in on a schedule of 60/80/100 percent beginning in the 2005 model year. At least one commenter pointed out that the OBD phase-in may require multiple changes to OBD systems in consecutive years because OBD systems are tied to the FTP standards to which they are certified. We have decided, for gasoline vehicle OBD systems, to revise the 60/80/100 percent phase-in to 60/80/80/100 percent beginning in the 2005 model year.[98] This revised OBD phase-in alleviates the commenter's concerns, and it makes the gasoline OBD phase-in more consistent with the implementation of new emission standards while maximizing the percentage of gasoline vehicles designed to meet the OBD requirements.

3. Heavy-Duty Evaporative Emissions Standards

We are finalizing new evaporative emission standards for heavy-duty vehicles and engines. The new standards are shown in Table III.C–4. These standards will apply to heavy-duty gasoline-fueled vehicles and engines, and methanol-fueled heavy-duty vehicles and engines. Consistent with existing standards, the standard for the two day diurnal plus hot soak test sequence would not apply to liquid petroleum gas (LPG) fueled and natural gas fueled HDVs.

TABLE III.C–4.—NEW HEAVY-DUTY EVAPORATIVE EMISSIONS STANDARDS [a]

[Grams per test]

Category	3 day diurnal + hot soak	Supplemental 2 day diurnal + hot soak [b]
8,500–14,000 lbs	1.4	1.75
>14,000 lbs	1.9	2.3

[a] To be implemented on the same schedule as the gasoline engine and vehicle exhaust emission standards shown in Tables III.C–1 and III.C–3. These new standards do not apply to medium-duty passenger vehicles, and do not apply to diesel fueled vehicles and engines.

[b] Does not apply to LPG or natural gas fueled HDVs.

These new standards represent more than a 50 percent reduction in the numerical standards as they exist today. The Phase 1 heavy-duty rule made no changes to the numerical value of the standard, but it did put into place new evaporative emission test procedures for heavy-duty complete gasoline vehicles.[99] (See 65 FR 59896, October 6, 2000.) For establishing evaporative emission levels from complete heavy-duty vehicles, the standards shown in Table III.C–4 presume the test procedures required in the Phase 1 heavy-duty rule.

The new standards for 8,500 to 14,000 pound vehicles are consistent with the Tier 2 standards for medium-duty passenger vehicles (MDPV). MDPVs are of consistent size and have essentially identical evaporative emission control systems as the remaining work-oriented HDVs in the 8,500 to 10,000 pound weight range. Therefore, the evaporative emission standards should be equivalent. We are requiring those same standards for the 10,000 to 14,000 pound HDVs because, historically, the evaporative emission standards have been consistent throughout the 8,500 to 14,000 pound weight range. We believe that the HDVs in the 10,000 to 14,000 pound range are essentially equivalent in evaporative emission control system design as the lighter HDVs; therefore, continuing this historical approach is appropriate.

We are finalizing slightly higher evaporative emission standards for the over 14,000 pound HDVs because of their slightly larger fuel tanks and for non-fuel emissions related to larger vehicle sizes. This is consistent with past evaporative emission standards. The levels chosen for the over 14,000 pound HDVs maintains the same ratio relative to the 8,500 to 14,000 pound HDVs as exists with current evaporative standards. To clarify, the current standards for the 3 day diurnal test are 3 and 4 grams/test for the 8,500 to 14,000 and the over 14,000 pound categories, respectively. The ratio of 3:4 is maintained for the new 2008 standards, 1.4:1.9.

The new standard levels are slightly higher than the California LEV-II standard levels. The California standard levels are 1.0 and 1.25 for the 3-day and the 2-day tests, respectively. However, federal vehicles are certified using the higher-volatility federal test fuel.[100] Arguably, the federal and California evaporative emission standards are equivalent in stringency despite the difference in standard levels. We believe that our standards are appropriate for federal heavy-duty vehicles.

We are requiring that the new evaporative emission standards be implemented on the same schedule as the gasoline engine and vehicle exhaust standards shown in Tables III.C–1 and III.C–3. This will allow manufacturers to plan any needed changes to new vehicles at the same time, although it is not necessary that the exhaust and evaporative standards be phased-in on the same vehicles and engines. Also, we are finalizing the revised durability provisions finalized in the Tier 2 rulemaking, which require durability demonstration using fuel containing at least 10 percent alcohol. Alcohol can break down the materials used in evaporative emission control systems. Therefore, a worst case durability demonstration would include a worst case alcohol level in the fuel (10 percent) because in some areas of the country there is widespread use of alcohol fuels.

D. Incentives for Early Introduction of Clean Engines and Vehicles

In our proposal, we requested comment on alternative phase-in approaches that could provide attractive implementation options to

[98] For those manufacturers choosing compliance Options 1 or 2 as part of the Phase 1 program, the gasoline vehicle OBD phase-in will become 40/60/80/80/100 percent beginning in model year 2004. (See 65 FR 59896.)

[99] The test procedure changes codify a commonly approved waiver allowing heavy-duty gasoline vehicles to use the light-duty driving cycle for demonstrating evaporative emission compliance. The urban dynamometer driving schedule (UDDS) used for heavy-duty vehicles is somewhat shorter than that used for light-duty vehicles, both in terms of mileage covered and minutes driven. This results in considerably less time for canister purge under the heavy-duty procedure than under the light-duty procedure. We recognize this discrepancy and have routinely provided waivers under the enhanced evaporative program that allow the use of the light-duty procedures for heavy-duty certification testing. This is consistent with CARB's treatment of equivalent vehicles.

[100] The federal test fuel specification for fuel volatility, the Reid Vapor Pressure, is 8.7 to 9.2 psi. The California test fuel specification is 6.7 to 7.0 psi.

manufacturers without compromising air quality. We requested comment on a ''declining standard'' approach and a ''cumulative phase-in'' approach. We received only limited comment on those approaches with no commenters expressing particularly strong support for them. We did receive numerous comments suggesting that we provide some form of incentive for manufacturers to introduce clean technology engines earlier than required by the base program. We are finalizing the approach discussed here as an incentive for manufacturers to introduce clean diesel engines earlier than the 2007 model year (or the 2008 model year for gasoline engines and vehicles).

In our Tier 2 rule, we stated our belief that providing inducements to manufacturers to certify vehicles early to very low levels is appropriate. We believe that such inducements may help pave the way for greater and/or more cost effective emission reductions from future vehicles. We believe the program discussed here provides a strong incentive for manufacturers to maximize their development and introduction of the best available vehicle and engine emission control technology. This, in turn, provides a stepping stone to the broader introduction of this technology soon thereafter. Early production of cleaner vehicles enhances the early benefits of our program. If a manufacturer can be induced to certify to the new standards by the promise of reasonable extra credits, the benefits of that decision to the program may last for many years.

The incentive program finalized today is analogous to the provisions set forth in the final Tier 2 rule. We are finalizing provisions that permit manufacturers to take credit for diesel engines certified to this rule's final standards prior to the 2007 model year (prior to the 2008 model year for gasoline engines or vehicles) in exchange for making fewer diesel engines certified to these standards in or after the 2007 model year (2008 for gasoline engines or vehicles). In other words, a clean engine sold earlier than required displaces the requirement to sell a similar engine later. Note that the emission standards must be met to earn the early introduction credit. That is, emission credits earned under averaging, banking, and trading cannot be used to demonstrate compliance. Therefore, the early introduction engine credit is an alternative to the ABT program in that any early engines or vehicles can earn either the engine credit or the ABT emission credit, but not both. The purpose of the incentive is to encourage introduction of clean technology engines earlier than required in exchange for added flexibility during the phase-in years.

Any early engine credits earned for a diesel-fueled engine would, of course, be predicated on the assurance by the manufacturer that the engine would indeed be fueled with low sulfur diesel fuel in the marketplace. We expect this would occur through selling such engines into fleet applications, such as city buses, school buses, or any such well-managed centrally-fueled fleet. For this reason, we believe that any engines sold within this early incentive program would be sold primarily in urban areas where more centrally-fueled fleets exist. Because of the difficulty associated with low sulfur diesel fuel availability prior to mid-2006, we believe it is necessary and appropriate to provide a greater incentive for early introduction of clean diesel technology. Therefore, we will count one early diesel engine as 1.5 diesel engines later. This extra early credit for diesel engines means that fewer clean diesel engines than otherwise would be required may enter the market during the years 2007 and later. But, more importantly, it means that emission reductions would be realized earlier than under our base program. We believe that providing incentives for early emission reductions is a worthwhile goal for this program. Therefore, we are finalizing these provisions for manufacturers willing to make the early investment in cleaner engines. For gasoline engines and vehicles, the early engine credit will be a one-for-one credit because the gasoline needed by the engine or vehicle will be readily available.

We are providing this early introduction credit to diesel engines that meet all of today's final standards (0.20 g/bhp-hr NO_X, 0.14 g/bhp-hr NMHC, and 0.01 g/bhp-hr PM). We are also providing this early introduction credit to diesel engines that pull-ahead compliance with only the 0.01 g/bhp-hr PM standard. However, a PM-only early engine can offset only PM compliant engines during the phase-in years, not NO_X, NMHC, and PM compliant engines.

An important aspect of the early incentive provision is that it must be done on an engine or vehicle count basis. That is, a diesel engine meeting new standards early counts as 1.5 such diesel engines later and a gasoline engine or vehicle early counts as one gasoline engine or vehicle later. This contrasts with a provision done on an engine percentage basis which would count one percent of diesel engines early as 1.5 percent of diesel engines later. Basing the incentive on an engine count will alleviate any possible influence of fluctuations in engine and vehicle sales in different model years.

Another important aspect of this program is that it is limited to engines sold prior to the 2007 model year (2008 for gasoline). In other words, diesel engines sold in the 2007 through 2009 model years that exceed the required 50 percent phase-in will not be considered ''early'' introduction engines and will, therefore, receive no early introduction credit. The same is true for gasoline engines and vehicles sold in the 2008 model year. However, such engines and vehicles will still be able to generate ABT credits. Note that early gasoline vehicles can count for later gasoline vehicles, and early gasoline engines can count for later gasoline engines, but early gasoline vehicles cannot be traded for later gasoline engines and vice versa.

Table III.D–1 shows an example for a diesel engine manufacturer and how it might use this incentive provision on an assumed fleet of 100 engine sales growing at one percent per year beginning in the 2004 model year.

TABLE III.D–1.—EXAMPLE ENGINE INTRODUCTION UNDER OUR EARLY INCENTIVE PROGRAM

	2004	2005	2006	2007	2008	2009	2010
Total Sales	100	101	102	103	104	105	106
Clean Engines under Base program	0	0	0	52	52	53	106
Clean Engines under Incentive Program	4	4	4	46	46	47	106

The four engines sold early in each of model years 2004 through 2006 generate a total credit of 18 engines (4×3×1.5=18). This allows the manufacturer to reduce its compliant engine count in each of model years 2007 through 2009 by six engines (18/3=6). This helps the manufacturer by reducing total costs through requiring fewer total engines at the low-emitting, clean engine level. But, more importantly, it introduces clean technology engines early and, by 2010 in this example, generates from four to six years of emission reductions that otherwise would not have occurred.

As further incentive to introduce clean engines and vehicles early, we are also finalizing a provision that would give manufacturers an early introduction credit equal to two engines during the phase-in years. This ''Blue Sky'' incentive would apply for diesel engines meeting one-half of today's final NO_X standard while also meeting the NMHC and PM standards. For gasoline engines, the same early introduction double engine credit would be available to engines sold prior to 2008 and meeting one-half the NO_X standard while also meeting the NMHC, PM, and evaporative emission standards. For gasoline vehicles, the double engine credit would be available to those vehicles certified early to the California SULEV levels and today's PM and evaporative emission standards.[101] Due to the extremely low emission levels to which these Blue Sky series engines and vehicles would need to certify, we believe that the double engine count credit is appropriate. Table III.D–2 shows the emission levels that would be required prior to the 2007 model year for diesel engines and the 2008 model year for gasoline vehicles and engines to earn any early introduction engine credits.

TABLE III.D–2.—EMISSION LEVELS AND CREDITS AVAILABLE FOR EARLY INTRODUCTION ENGINES

Category	Must meet [a]	Early engine credit [b]
Early Diesel PM-only [c]	Phase 2 PM & Phase 1 NO_X + NMHC	1.5-to-1
Early Diesel Engine [c]	All Phase 2 Standards	1.5-to-1
Early Gasoline Engine or Vehicle—Exhaust	Phase 2 Exhaust Standards	1-to-1
Early Gasoline Engine or Vehicle—Evap	Phase 2 Evaporative Standards	1-to-1
Blue Sky Series Diesel [c] or Gasoline Engine	0.10 g/bhp-hr NO_X & All other Phase 2 Standards [d]	2-to-1
Blue Sky Series Gasoline Vehicle	0.02 g/mi PM & California SULEV Level Standards [d]	2-to-1

[a] Phase 1 refers to standards required by 65 FR 59896, October 6, 2000; Phase 2 refers to today's final standards.
[b] Engine count credits must be earned prior to the phase-in years of 2007 for diesel and 2008 for gasoline.
[c] Early diesel engines must also meet the Phase 2 crankcase emissions requirements.
[d] For gasoline engines and vehicles, these must also meet the Phase 2 evaporative emission standards.

Alternative fueled vehicles and engines can also play a significant role in this incentive program. Any alternative fueled diesel-cycle engine certified to today's final standards prior to the 2007 model year can generate a 1.5 diesel-cycle engine count credit during the diesel phase-in years. Likewise, any alternative fueled Otto-cycle engine certified to today's final standards prior to the 2008 model year can generate one Otto-cycle engine count credit. Many commenters suggested that EPA should do more than was put forward in our proposal to encourage the introduction of alternative fuel technologies. To the extent that alternative fueled vehicles and engines are cleaner than diesels and gasolines, they may have an advantage within today's program. We believe that this program and its structure provides significant incentives for manufacturers to introduce alternative fueled vehicles and engines.

One final aspect of the incentive program is its interaction with our Tier 2 program. The Tier 2 final rule allows some MDPVs to be equipped with engine-certified diesel engines through the 2007 model year. Any such engines are required to comply with the diesel engine standards that apply during the given model year. Given that they are certified as heavy-duty diesel engines, any such engines that meet today's final diesel standards prior to the 2007 model year would be allowed within today's incentive program provided they in no way generate any emission or engine count credits within the Tier 2 program. Further, any MDPVs, whether gasoline or diesel, certified on a chassis dynamometer and being counted in any way as part of the Tier 2 program, cannot be used as part of today's incentive program because they are not considered heavy-duty vehicles.

E. Feasibility of the New Engine and Vehicle Standards

For more detail on the information and analyses supporting our assessment of the technological feasibility of today's standards, please refer to the Final RIA in the docket for this rule. The following discussion summarizes the more detailed discussion found in the Final RIA and in the Summary and Analysis of Comments document.

1. Feasibility of Stringent Standards for Heavy-Duty Diesel

The designers and manufacturers of diesel engines have made substantial progress over the last 20 years reducing NO_X emissions by 60 percent and PM emissions by almost 90 percent through better engine design. We believe that, in response to our Phase 1 heavy-duty rule, industry will have implemented all promising engine-based emission reduction technologies in order to meet the 2.5 g/bhp-hr NO_X+NMHC standard and the 0.1 g/bhp-hr PM standard. To get the substantial PM and NO_X reductions from diesel engines needed to solve the air quality problems identified in section II, we believe a new technology solution will be required. That solution is the application of high efficiency exhaust emission control technologies (catalysts) to diesel engines, analogous to the application of catalyst technologies to passenger cars in the 1970s. These high efficiency catalyst technologies, enabled by the use of diesel fuel with sulfur content at or below 15 ppm, can reduce NO_X and PM emissions by more than 90 percent. This dramatic reduction in emissions will

[101] The California SULEV levels are, for 8,500 to 10,000 pound vehicles, 0.1 g/mi NO_X, 0.100 g/mi NMOG, 0.008 g/mi HCMO, and 0.06 g/mi PM; and for 10,000 to 14,000 pound vehicles, 0.2 g/mi NO_X, 0.117 g/mi NMOG, 0.010 g/mi HCHO, and 0.06 g/mi PM. With the exception of the PM standards, these emission levels are half or roughly half of this rule's final gasoline vehicle standards.

enable diesel powered vehicles to reach emission levels well below today's gasoline emission levels. As detailed in the sections below, these technologies are rapidly being developed and will be available for application to diesel powered vehicles by, or even before, the 2007 model year provided the low sulfur diesel fuel required today is widely available.

a. Meeting the PM Standard

Diesel PM consists of three primary constituents: Unburned carbon particles (soot), which make up the largest portion of the total PM; the soluble organic fraction (SOF), which consists of unburned hydrocarbons that have condensed into liquid droplets or have condensed onto unburned carbon particles; and sulfates, which result from oxidation of fuel and oil derived sulfur in the engine's exhaust. Several exhaust emission control devices have been developed to control harmful diesel PM constituents—the diesel oxidation catalyst (DOC), and the many forms of diesel particulate filters, sometimes called PM traps. DOCs have been shown to be durable in use, but they effectively control only the SOF portion of the total PM which, on a modern diesel engine constitutes only 10 to 30 percent of the total PM. Therefore, the DOC on its own would only offer a modest reduction in PM emissions, and would not be able to meet the PM standard set here.

Diesel particulate filters were first investigated some twenty years ago as a means to capture solid particles in diesel exhaust. A variety of approaches to this technology have been developed most of which provide excellent mechanical filtration of the solid particles that make up the bulk of diesel PM (60 to 80 percent). The collected PM, mostly carbon particles, must then be ''burned off'' of the filter before the filter becomes plugged. This burning off of collected PM (oxidation of the stored PM, releasing CO_2) is referred to as ''regeneration,'' and can occur either:

- On a periodic basis by using base metal catalysts (including fuel-borne base metal catalysts) or an active regeneration system such as an electrical heater, a fuel burner, or a microwave heater; or,
- On a continuous basis by using precious metal catalysts.

Diesel particulate traps that regenerate on a periodic basis (referred to here as either uncatalyzed or base metal catalytic PM traps) demonstrated high PM trapping efficiencies many years ago, but the level of the applicable PM standard was such that it could be met through less costly ''in-cylinder'' control techniques. Un-catalyzed diesel particulate filters will not be able to meet the 0.01 g/bhp-hr PM standard finalized today as they are only moderately effective at controlling the SOF fraction of the particulate. In addition, they require active regeneration technology which must be engaged frequently making the systems expensive to operate (increasing fuel consumption) and less reliable.

We believe the kind of PM trap that would be able to meet the PM standard in a reliable, durable, cost effective manner, and the type of trap that will prove to the be the industry's technology of choice, is one capable of regenerating on an essentially continuous basis. In addition these PM traps will be able to achieve very low PM emissions because:

- They are highly efficient at controlling the solid carbon portion of PM;
- Unlike uncatalyzed filters, they are highly efficient at oxidizing the SOF of diesel PM;
- They employ precious metals to produce conditions that reduce the temperature at which regeneration occurs, thereby allowing for passive regeneration under normal operating conditions typical of a diesel engine; [102]
- Because they regenerate continuously, they have lower average backpressure thereby reducing potential fuel economy impacts; and,
- Because of their passive regeneration characteristics, they need no extra burners or heaters like what would be required by an active regeneration system, thereby reducing potential failures and fuel economy impacts.

These catalyzed PM traps are able to provide in excess of 90 percent control of diesel PM when operated on diesel fuel with sulfur levels at or below 15 ppm. However, as discussed in detail in the RIA, the catalyzed PM trap cannot regenerate properly with current fuel sulfur levels, as such sulfur levels poison the catalytic function of the PM trap inhibiting the necessary NO to NO_2 reaction to the point of stopping trap regeneration.[103] Also, because SO_2 is so readily oxidized to SO_3, the 0.01 g/bhp-hr PM standard cannot be achieved with fuel sulfur levels above 15 ppm because of the resultant increase in sulfate PM emissions (''sulfate make'').[104]

More than one exhaust emission control manufacturer is known to have or be developing these precious metal catalyzed, passively regenerating PM traps and to have them in broad field test programs in areas where low sulfur diesel fuel is currently available. In field trials since 1994, they have demonstrated highly efficient PM control and good durability with some units accumulating in excess of 360,000 miles of field use.[105] The experience gained in these field tests also helps to clarify the need for low sulfur diesel fuel. In Sweden, where below 10 ppm diesel fuel sulfur is readily available, more than 3,000 catalyzed diesel particulate filters have been introduced into retrofit applications without a single failure. These retrofit applications include intercity trains, airport buses, mail trucks, city buses and garbage trucks.[106] The field experience in areas where sulfur is capped at 50 ppm has been less definitive. In regions without extended periods of cold ambient conditions, such as the United Kingdom, field tests on 50 ppm sulfur cap fuel have been positive, matching the durability at 10 ppm, but would be unable to meet a 0.01 g/bhp-hr PM standard due to a substantial increase in sulfate PM. However, field tests on 50 ppm sulfur fuel in Finland where colder winter conditions are often encountered (similar to northern parts of the United States) have experienced a failure rate of 10 percent, due to trap plugging. This 10 percent failure rate has been attributed to insufficient trap regeneration due to fuel sulfur in combination with low ambient temperatures.[107] Other possible reasons for the high failure rate in Finland when contrasted with the Swedish experience appear to be unlikely. The Finnish and Swedish fleets were substantially similar, with both fleets consisting of transit buses powered by Volvo and Scania engines in the 10 to 11 liter range. Further, the buses were operated in city areas and none of the vehicles were operated in northern extremes such as north of the

[102] For PM trap regeneration without precious metals, exhaust metals, exhaust temperatures in excess of 650°C must be obtained. At such high temperatures, carbon will burn (oxidize to CO_2) provided sufficient oxygen is present. Although the largest heavy-duty diesels may achieve exhaust temperatures of 650°C under some operating conditions, smaller diesel engines, particularly light-duty and light heavy-duty diesel engines, will rarely achieve such high temperatures. For example, exhaust temperatures on the HDE Federal Test Procedure cycle typically range from 100°C to 450°C. Precious metal catalyzed traps use platinum to oxidize NO in the exhaust to No_2, which is capable of oxidizing carbon at temperatures as low as 250°C to 300°C.

[103] Cooper and Thoss, Johnson Matthey, SAE 890404.

[104] See the RIA for more detail on the relationship of fuel sulfur to sulfate make.

[105] Allansson, *et al.* SAE 2000–01–0480.

[106] Allansson, *et al.* SAE 2000–01–0480.

[107] Letter from Dr. Barry Cooper to Don Kopinski, US EPA, Air Docket A–99–06.

Arctic Circle.[108] Given that the fleets in Sweden and Finland were substantially similar, and given that ambient conditions in Sweden are expected to be similar to those in Finland, we believe that the increased failure rates noted here are due to the higher fuel sulfur level in a 50 ppm cap fuel versus a 10 ppm cap fuel.[109] Testing on an even higher fuel sulfur level of 200 ppm was conducted in Denmark on a fleet of 9 vehicles. In less than six months all of the vehicles in the Danish fleet had failed due to trap plugging.[110] We believe that this real world testing clearly indicates that increasing diesel fuel sulfur levels limit trap regeneration, leading to plugging of the PM trap even at fuel sulfur levels as low as 50 ppm.

From these results, we can further conclude that lighter applications (such as large pick-up trucks and other light heavy-duty applications), having lower exhaust temperatures than heavier applications, may experience similar failure rates even in more temperate climates and would, therefore, need lower sulfur fuel even in the United Kingdom. These results are understood to be due to the effect of sulfur on the trap's ability to create sufficient NO_2 to carry out proper trap regeneration. Without the NO_2, the trap continues to trap the PM at high efficiency, but it is unable to oxidize, or regenerate, the trapped PM. The possible result is a plugged trap. This vulnerability of the catalyzed diesel particulate filter due to sulfur in the fuel and the consequences of trap plugging are discussed fully in section III.F and the RIA.

Several commenters raised concerns with our use of the extensive fleet experience in Europe, to draw conclusions about the necessary sulfur reductions required in order to ensure PM trap durability. Their concerns focused generally around the fact that these fleets were made up of retrofit applications, and that the nature of the fleet operation did not represent a controlled experiment (ideally all things would have been equal except for the fuel sulfur level). While we acknowledge these limitations in the data, we believe they still provide reasonable evidence of the need for low sulfur diesel fuel. The diversity of applications, climates, fuel properties, NO_X emission levels, and sulfur levels help to show the relative robustness of the technology. Further, we believe the PM trap manufacturer's analysis of the failure mode (*i.e.,* that cold ambient conditions coupled with diminished NO to NO_2 conversion due to sulfur led to the failures that were experienced) is the most likely explanation of the observed phenomena. Sulfur in diesel fuel is known to inhibit the oxidation of NO to NO_2 (as described in section III.F) leading to reduced ability to regenerate the PM filter, especially under low ambient conditions. For our detailed response to comments surrounding catalyzed diesel particulate filter durability refer to the RTC document.

Several progressive refineries have begun to produce diesel fuel with sulfur content less than 15 ppm for limited markets in the United States. The availability of this low sulfur diesel fuel makes it possible to introduce diesel particulate filters into these limited markets today. International Truck and Engine Corporation (''International'') has announced its intent to commercialize its Green Diesel Engine Technology™ in 2001 coupled with less than 15 ppm sulfur fuel to achieve our proposed MY 2007 NMHC and PM emissions standards six years in advance of the requirement. International's ability to bring a catalyzed diesel particulate filter technology to commercialization in such a short period highlights the advanced state of this technology.[111]

Modern catalyzed PM traps have been shown to be very effective at reducing PM mass. In addition, recent data show that they are also very effective at reducing the overall number of emitted particles when operated on low sulfur fuel. Hawker, *et. al.,* found that a modern catalyzed PM trap reduced particle count by over 95 percent, including some of the smallest measurable particles (<50 nm), at most of the tested conditions. The lowest observed efficiency in reducing particle number was 86 percent. No generation of particles by the PM trap was observed under any tested conditions.[112] Kittelson, *et al.,* confirmed that ultrafine particles can be reduced by a factor of ten by oxidizing volatile organics, and by an additional factor of ten by reducing sulfur in the fuel. Catalyzed PM traps efficiently oxidize nearly all of the volatile organic PM precursors, and elimination of as much fuel sulfur as possible will substantially reduce the number of ultrafine PM emitted from diesel engines. The combination of catalyzed PM traps with low sulfur fuel is expected to result in very large reductions in both PM mass and the number of ultrafine particles.

The data currently available show that catalyzed particulate filters can provide significant reductions in PM. Catalyzed particulate filters, in conjunction with low sulfur fuel, have been shown to be more than 90 percent efficient over the FTP and at most SET modes.[113] Testing completed as part of the Diesel Emission Control Sulfur Effects (DECSE) program has demonstrated that a heavy duty diesel engine can achieve less than 0.01 g/bhp-hr PM emissions over the supplemental emission test when equipped with a catalyzed diesel particulate filter and operated on diesel fuel with sulfur content less than 15 ppm.[114] Further testing at NVFEL has demonstrated that FTP PM emissions can likewise be controlled below 0.01 g/bhp-hr provided less than 15 ppm sulfur diesel fuel is used with a catalyzed PM trap.[115] Based upon these test results, extensive field experience throughout the world and International Truck and Engine Corporation's commitment to produce vehicles with this technology in 2001, we conclude that the 0.01 g/bhp-hr FTP PM standard is feasible and that it represents the lowest emission level possible having given consideration to cost, energy and safety factors.

With regard to the NTE PM requirements, there is the potential for sulfate production during some operating modes covered by the NTE which would likely exceed the FTP PM standard. However, the NTE PM standard is equal to 1.5 × FTP standard. Even though the FTP standard of 0.01 g/bhp-hr PM is very low, the small additional head room provided by a

[108] Telephone conversation between Dr. Barry Cooper, Johnson Matthey, and Todd Sherwood, EPA, Air Docket A–99–06.

[109] The average temperatrue in Helsinki, Finland, for the month of January is 21°F. The average temperature in Stockholm, Sweden, for the month of January is 26°F. The average temperature at the University of Michigan in Ann Arbor, Michigan, for the month of January is 24°F. The temperature reported here are from *www.worldclimate.com* based upon the Global Historical Climatology Network (GHCN) produced jointly by the National Climatic Data Center and Carbon Dioxide Information Analysis Center at Oak Ridge National Laboratory (ORNL).

[110] Letter from Dr. Barry Cooper to Don Kopinski US EPA, Air Docket A–99–06.

[111] International Truck and Engine Corporation's comments on the proposed 2007 heavy duty vehicle standards, Air Docket A–99–06, page 2.

[112] Hawker, P., *et al.,* Effect of a Continuously Regenerating Diesel Particulate Filter on Non-Regulated Emissions and Particle Size Distribution, SAE 980189.

[113] Demonstration of Advanced Emission Control Technologies Enabling Diesel-Powered Heavy-Duty Engines to Achieve Low Emission Levels, Manufacturers of Emissions Controls Association, June 1999.

[114] Testing for the DECSE program was conducted on 3 ppm and 30 ppm diesel fuel. A straight-line fit to the results between 3 ppm and 30 ppm shows that a 15 ppm cap fuel would have emissions less than 0.01 g/bhp-hr. Diesel Emission Control Sulfur Effects (DECSE) Program, Phase I Interim Data Report No. 4: Diesel Particulate Filters—Final Report, January 2000.

[115] Memorandum from Charles Schenk, EPA, to Air Docket A–99–06, ''Summary of EPA PM Efficiency Data,'' May 8, 2000.

NTE multiplier of 1.5 will be sufficient to enable PM trap equipped HDDEs to meet the NTE provisions, even when operated on 15 ppm sulfur fuel. This is supported by data generated as part of the DECSE test program, as well as data generated at our own laboratory, as discussed in greater detail in the RIA.[116] As discussed in the RIA, the expanded ambient condition requirements of the NTE test procedure will have little effect on the PM reduction capabilities of a PM trap. The SET PM requirements have also been demonstrated in our laboratory and are supported by the DECSE test program. A detailed discussion is contained in the RIA. Based on this information and assessment, we conclude that the PM supplemental requirements will be feasible in the 2007 time frame.

b. Meeting the NO_X Standard

NO_X emissions from gasoline-powered vehicles are controlled to extremely low levels through the use of the three-way catalyst technology first introduced in the 1970s. Today, an advancement upon this well-developed three-way catalyst technology, the NO_X adsorber, has shown that it too can make possible extremely low NO_X emissions from lean-burn engines such as diesel engines. The potential of the NO_X adsorber catalyst is limited only by its need for careful integration with the total vehicle system (as was done for three-way catalyst equipped passenger cars in the 1980s and 1990s) and by poisoning of the catalyst from sulfur in the fuel. Just as the Tier 2 rulemaking enables advanced three-way catalyst equipped vehicles to meet ultra low NO_X emission levels through the use of low sulfur gasoline, today's rulemaking will enable NO_X adsorbers through substantial reductions in diesel fuel sulfur levels. The NO_X adsorber has already been commercially introduced in a number of stationary and mobile source applications.

NO_X Adsorbers in Power Generation

NO_X adsorber catalysts were first introduced in the power generation market less than five years ago. Since then, NO_X adsorber systems in stationary source applications have enjoyed considerable success. In 1997, the South Coast Air Quality Management District of California determined that a NO_X adsorber system provided the ''Best Available Control Technology'' NO_X limit for gas turbine power systems.[117] Average NO_X control for these power generation facilities is in excess of 92 percent.[118] A NO_X adsorber catalyst applied to a natural gas fired powerplant has demonstrated better than 99 percent reliability for more than 21,000 hours of operation while controlling NO_X by more than 90 percent.[119]

NO_X Adsorbers in Lean-Burn Gasoline Vehicles

The NO_X adsorber's ability to control NO_X under oxygen rich (fuel lean) operating conditions has led the industry to begin applying NO_X adsorber technology to lean-burn engines in mobile source applications. NO_X adsorber catalysts have been developed and are now in production for lean-burn gasoline vehicles in Japan, including several vehicle models sold by Toyota Motor Corporation.[120] The 2000 model year saw the first U.S. application of this technology with the introduction of the Honda Insight, certified to the California LEV–I ULEV category standard. These lean burn gasoline applications are of particular interest because they are similar to diesel vehicle applications in terms of NO_X storage under lean exhaust conditions and the need for periodic NO_X regeneration under transient driving conditions. The substantial experience already gained and continuing to be gained from NO_X adsorber use in lean-burn gasoline vehicles provides a firm basis from which diesel NO_X adsorber development is proceeding.

NO_X Adsorbers in Light-Duty Diesel Vehicles

This rapid development pace of the NO_X adsorber technology is not limited to gasoline applications but includes markets where low sulfur diesel fuel is already available or has been mandated to coincide with future emission standards. In Japan, Toyota Motor Corporation has recently announced that it will begin introducing vehicles using its Diesel Particulate— NO_X Reduction (DPNR) system in 2003. This system uses a NO_X adsorber catalyst applied on the surface of a diesel particulate filter, providing greater than 80 percent reductions in both PM and NO_X. Toyota notes however, that DPNR requires fuel with low sulfur content in order to maintain high efficiency for a long duration.[121] In Europe, both Daimler Chrysler and Volkswagen, driven by a need to meet stringent Euro IV emission standards, have published results showing how they would apply the NO_X adsorber technology to their diesel-powered passenger cars. Volkswagen reports that it has already demonstrated NO_X emissions of 0.137 g/km (0.22 g/mi), a 71 percent reduction, on a diesel powered Passat passenger car equipped with a NO_X adsorber catalyst.[122]

US DOE Research Programs

The U.S. Department of Energy (DOE) has funded several test programs at national laboratories and in partnership with industry to investigate NO_X adsorber technology. At Oak Ridge National Laboratory, DOE researchers have shown that a NO_X adsorber and a laboratory regeneration system can reduce NO_X by more than 90 percent when used on a diesel powered Mercedes A-class passenger car. Following 600 miles of driving with 150 ppm sulfur fuel, the system performance degraded considerably.[123] While the system was not production ready, it does demonstrate that very high efficiencies are achievable with advanced emission control systems operating on low sulfur fuel.[124] With additional system development over the next several years we are confident that the remaining design challenges such as long-term durability will be solved.

EPA NVFEL Current Technology Evaluation Program

As part of an effort to evaluate the rapidly developing state of this technology, the Manufacturers of Emission Control Association (MECA) provided four different NO_X adsorber catalyst formulations to EPA for

[116] Diesel Emission Control Sulfur Effects (DECSE) Program—Phase II Interim Data Report No. 4, Diesel Particulate Filters—Final Report, January 2000, Table C1, www.ott.doe.gov/decse.

[117] Letter from Barry Wallerstein, Acting Executive Officer, SCAQMD, to Robert Danziger, Goal Line Environmental Technologies, dated December 8, 1997, www.glet.com.

[118] Reyes and Cutshaw, $SCONO_X$ Catalytic Absorption System, December 8, 1998, www.glet.com.

[119] Danziger, R. *et al.* 21,000 Hour Performance Report on SCONOX, 15 September 2000, Air Docket A–99–06.

[120] Toyota requires that their lean burn gasoline engines equipped with NO_X adsorbers are fueled on premium gasoline in Japan, which has an average sulfur content of 6 ppm. (See Item IV–E–31 in Air Docket A–99–06.)

[121] Revolutionary Diesel Aftertreatment System Simultaneously Reduces Diesel Particulate Matter and Nitrogen Oxides, Toyota Motor Corporation press release, July 25, 2000, contained in Air Docket A–99–06.

[122] Pott, E., *et al.,* ''Potential of NO_X-Trap Catalyst Application for DI–Diesel Engines,'' Air Docket A–99–06.

[123] Diesel Vehicle Emission Control Sulfur Effects Project at Oak Ridge National Laboratory, Phase 1 Overview. Pete Devlin, DOE Office of Transportation Technologies, March 29, 2000, Air Docket A–99–06.

[124] Diesel Emission Control Sulfur Effects (DECSE) Program Phase II Summary Report: NO_X Adsorber Catalysts, October 2000, Air Docket A–99–06.

evaluation. Testing of these catalysts at NVFEL revealed that all four formulations were capable of reducing NO_X emissions by more than 90 percent over the broad range of operation in the supplemental emission test (SET) procedure as summarized in Figure III–1. At operating conditions representative of ''road-load'' operation for a heavy duty on-highway truck, the catalysts showed NO_X reductions as high as 99 percent resulting in NO_X emissions well below 0.1 g/bhp-hr from an engine-out level of nearly 5 g/bhp-hr.[125] Testing on the FTP has shown similarly good results, with hot start FTP NO_X emissions reduced by more than 90 percent. These results demonstrate that significant NO_X reductions are possible over a broad range of operating conditions with current NO_X adsorber technology, as typified by the FTP and the SET.

[125] For more information on testing conducted at NVFEL, refer to the in-depth discussion given in the RIA, and to the initial test report contained in Air Docket A–99–06, Item IV–A–29.

BILLING CODE 6560–50–P

SIP Approval

§ 117.667 St. Croix River.

* * * * *

(f) The Stillwater Highway Drawbridge, mile 23.4, St. Croix River, at Stillwater, Minnesota, need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: January 26, 2005.

R.F. Duncan,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 05–2797 Filed 2–11–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R06–OAR–2005–TX–0004; FRL–7872–7]

Approval and Promulgation of State Implementation Plans; Texas; Revision to the Rate of Progress Plan for the Houston/Galveston (HGA) Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the Texas State Implementation Plan (SIP) Post-1999 Rate of Progress (ROP) Plan, the 1990 Base Year Inventory, and the Motor Vehicle Emissions Budgets (MVEB) established by the ROP Plan, for the Houston Galveston (HGA) ozone nonattainment Area submitted November 16, 2004. The intended effect of this action is to approve revisions submitted by the State of Texas to satisfy the reasonable further progress requirements for 1-hour ozone nonattainment areas classified as severe and demonstrate further progress in reducing ozone precursors. We are approving these revisions in accordance with the requirements of the Federal Clean Air Act (the Act).

DATES: This rule is effective on April 15, 2005, without further notice, unless EPA receives relevant adverse comment by March 16, 2005. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R06–OAR–2005–TX–0004, by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the on-line instructions for submitting comments.

Agency Web Site: http://docket.epa.gov/rmepub/ Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

U.S. EPA Region 6 ''Contact Us'' Web Site: http://epa.gov/region6/r6coment.htm. Please click on ''6PD'' (Multimedia) and select ''Air'' before submitting comments.

E-mail: Mr. Thomas Diggs at *diggs.thomas@epa.gov.* Please also cc the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Fax: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at fax number 214–665–7263.

Mail: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

Hand or Courier Delivery: Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except for legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Regional Material in EDocket (RME) ID No. R6–OAR–2005–TX–0004 The EPA's policy is that all comments received will be included in the public file without change and may be made available online at *http://docket.epa.gov/rmepub/,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through Regional Material in EDocket (RME), regulations.gov, or e-mail if you believe that it is CBI or otherwise protected from disclosure. The EPA RME Web site and the Federal regulations.gov are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the Regional Material in EDocket (RME) index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in the official file which is available at the Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at (214) 665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Guy Donaldson, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7242, *donaldson.guy@epa.gov.*

SUPPLEMENTARY INFORMATION:

What Action Are We Taking?

We are approving revisions to the HGA area post-1999 ROP Plan for the 2000–2002, 2003–2005 and 2006–2007 time periods submitted in a letter dated November 16, 2004. The post-1999 ROP

plan is designed to achieve an additional 9 percent reduction in emissions between 1999 and 2002, a further 9 percent reduction between 2002 and 2005, and another further 9 percent reduction between 2005 and 2007. We are also approving revisions to the 1990 base year inventory and the ROP Plan's associated Motor Vehicle Emissions Budgets (MVEB) for 2002, 2005 and 2007. This plan replaces previous versions of the post-1999 rate of progress plan, the 1990 base year inventory, and mobile vehicle emissions budgets contained in the post-1999 ROP plan, that were approved November 14, 2001 (66 FR 57160).

Why Are These Revisions Necessary?

On November 16, 2004, the State of Texas submitted the proposed revisions reflecting the use of EPA's new MOBILE6 model. We released this new model on January 29, 2002. (See 67 FR at 4254). Using MOBILE6 to calculate the 2002, 2005 and 2007 ROP target levels requires a revision to the 1990 base year inventory which is the planning base line from which the ROP targets are calculated. Texas updated the 1990 base year inventory for the HGA area to reflect the use of MOBILE6. This affected the base year on-road mobile source inventory as well as the projected emissions reductions in 2005 and 2007 from mobile source control programs. Texas also made a number of other changes as a result of updated information.

These revisions result from Texas incorporating the following updated information into the plan:

- New on-road mobile emissions estimates based on the latest emissions model, MOBILE6, and the effects of the latest census information and most recent planning assumptions.
- New off-road mobile emission estimates using the new NONROAD emissions model and several area specific activity level studies.
- New future emission estimates because three rural counties, Waller, Liberty and Chambers, have been dropped from the I/M program.
- The future NO_X estimates include relaxation of the industrial NO_X rules from a nominal 90% control to a nominal 80% control.
- New future emissions estimates that do not include emission reduction projections from the Texas Low Emission Diesel program. Note, Low Emission Diesel is still required by the TCEQ rules. It is just not credited to the Rate of Progress plan.

What Are the Clean Air Act's Rate of Progress Requirements?

Section 182(c)(2) of the CAA requires each State to submit for each serious and above ozone nonattainment area a SIP revision, which describes, how the area will achieve an actual volatile organic compound (VOC) emission reduction from the baseline emissions of at least 3 percent of baseline emissions per year averaged over each consecutive 3-year period beginning 6 years after enactment (i.e., November 15, 1996) until the area's attainment date. The Clean Air Act does not allow States to take credit for emission reductions due to Federal Motor Vehicle Controls adopted prior to 1990 or corrections to reasonably available control technology or vehicle inspection and maintenance programs. Section 182(c)(2)(C) explains the conditions under which reductions of oxides of nitrogen (NO_X) may be substituted for reductions in VOC emissions for post 1996 and post 1999 ROP plans.

Why Control Volatile Organic Compounds and Oxides of Nitrogen?

VOCs participate in chemical reactions with oxides of nitrogen (NO_X) and oxygen in the atmosphere in the presence of sunlight to form ozone, a key component of urban smog. Inhaling even low levels of ozone can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis, asthma and reduce lung capacity.

EPA has established National Ambient Air Quality Standards for Ozone. The previously adoptedStandard of 0.12 ppm averaged over an 1 hour period is being phased out and replaced with a newStandard of 0.08 ppm averaged over an 8 hour period. The 1-hour standard will be revoked on June 15, 2005.

Areas that do not meet a National Ambient Air Quality Standard are subject to nonattainment requirements of the Clean Air Act. Air quality in HGA does not meet either the 1-hour or the 8-hour NAAQS for ozone. As such, the area is subject to the ROP requirements of section 182 of the Clean Air Act. The revised ROP plan approved today was developed in response to a 1-hour ozone requirement. Under the antibacksliding provisions of the Phase I ozone implementation rule, published on April 30, 2004 (69 FR 69 FR 23951), these rate of progress requirements must remain in effect. In the future, TCEQ will have to submit a new Rate of Progress Plan to meet the 8 hour requirements.

How Has Texas Demonstrated Compliance With Rate of Progress Requirements?

Table 1 and Table 2 show the target levels and the projected controlled VOC and NO_X emissions for each of the milestone years in the SIP. EPA has articulated its policy regarding the use of MOBILE6 in SIP development in its ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.'' [1]

The target levels are calculated by subtracting the needed percentage reductions for each ROP milestone year and any non-creditable reductions from the 1990 base year levels. Projected future-year emissions for 2005 and 2007 were developed by projecting from the State's 2002 Emission Inventory—actual emission inventory estimates reported for 2002. The projections for 2005 and 2007 were determined based on growth estimates using EPA approved methodologies and imposition of Federal and SIP-approved state enforceable controls. The two tables demonstrate that estimated emissions in 2002 and projected emissions in 2005 and 2007 are well below the target levels for each of the milestone years. In other words, the TCEQ has shown that there will be more emission reductions than are required to meet each milestone's target level. For a complete discussion of EPA's evaluation of TCEQ's calculation of target levels and emission projections, see the technical support document for this action.

TABLE 1.—ACTUAL AND PROJECTED NO_X EMISSIONS

(tons/day)

Category\year	1990	2002	2005	2007
Projected Emissions	1345.8	843.57	699.65	550.25

[1] Memorandum, ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity,'' issued January 18, 2002. A copy of this memorandum can be found on EPA's Web site at *http://www.epa.gov/otaq/transp/traqconf.htm.*

TABLE 1.—ACTUAL AND PROJECTED NO_X EMISSIONS—Continued

(tons/day)

Category\year	1990	2002	2005	2007
Target Level	NA	1088.24	945.57	866.54

The reductions in projected emissions shown in Table 1 result from a variety of measures including post-1990 Federal motor vehicle control programs, NO_X reasonably available control technology, and controls on lean burn engines. The revised ROP Plan does not rely upon any new controls that were not part of the previously approved ROP plan; rather, the changes in the numbers are mainly due to the MOBILE6 revised emissions projections for the on road motor vehicle emissions and the adjustments to State's rules for I/M and industrial NO_X emissions. As in the previous plan, the largest contributor to NO_X emission reductions continues to be the controls on industrial NO_X emissions. This continues to be the case even with the relaxation of the rules from 90 to 80% nominal control.

It is worth noting that the 2005 and 2007 projections above do not include all of the emission reductions expectedin the Houston/Galveston area including reductions from the Texas Emission Reduction Program.

TABLE 2.—ACTUAL AND PROJECTED VOC INVENTORIES

[tons/day]

Category\year	1990	2002	2005	2007
Total	1111.21	557.55	523.66	507.13
Target	NA	726.7	715.7	714.8

As can be seen in Table 2, the VOC emission reductions were largely realized between 1990 and 2002. These VOC reductions result from post-1990 Federal motor vehicle emission control programs, the Texas I/M program and a variety of point source measures implemented as part of the area's ROP plans for the 1990–1996 and 1997–1999 time periods. These plans were previously approved November 14, 2001 (66 FR 57160) and April 25, 2001 (66 FR 20746). The revised numbers are due primarily to the use of MOBILE6 and improvements to the area and non-road inventories.

What Are the Revisions to the 1990 Base Year Inventory?

Table 3 summarizes the changes to the approved 1990 base year inventory. For a full discussion of EPA's evaluation, see the technical support document for this action.

TABLE 3.—1990 RATE-OF-PROGRESS BASE YEAR EMISSIONS INVENTORY

[Base Year Inventory (tons per day)]

Source type	VOC		NO_X	
	Old	New	Old	New
Point	483.28	483.28	794.85	794.85
Area	200.07	208.17	14.37	57.57
On-road Mobile	251.52	321.70	337.03	391.10
Non-road Mobile	129.98	97.96	198.08	112.28
Total	1064.85	1111.21	1344.4	1355.8

The columns denoted as old were the 1990 base year emission inventories approved November 14, 2001 (66 FR 57160). The changes to the inventory result from the use of the more recent version of EPA's model for estimating on-road mobile source emissions, MOBILE6, the more recent emissions model for missions from off-road mobile source, NONROAD, and several area-specific studies of activity levels.

What Are the Motor Vehicle Emissions Budgets Established in the Plan?

Table 4 documents the motor vehicle emissions budgets that have been established by this post-1999 ROP Plan revision. A motor vehicle emission budget is that portion of the total allowable emissions defined in the SIP revision allocated to on-road mobile sources for a certain date for the purpose of meeting the purpose of the SIP, in this case reasonable further progress towards attainment of the NAAQS. EPA's conformity rule (40 CFR part 51, subpart T and part 93, subpart A) require that transportation plans, programs and projects in nonattainment or maintenance areas conform to the SIP. The motor vehicle emissions budget is one mechanism EPA has identified for demonstrating conformity. Upon the effective date of this SIP approval, all future transportation improvement programs and long range transportation plans for the Houston/Galveston area will have to show conformity to the budgets in this plan; previous budgets approved or found adequate will no longer be applicable.

TABLE 4.—SIP ROP MOTOR VEHICLE EMISSIONS BUDGETS

[tons per day]

Year	NO_X	VOC
2002	326.6	132.0
2005	257.3	104.2
2007	210.0	90.0

Final Action

The EPA is approving the aforementioned changes to the Texas SIP because the revisions are consistent with the Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the EPA views this as a non-controversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective April 15, 2005 without further notice, unless EPA receives relevant adverse comment by March 16, 2005.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on April 15, 2005, and no further action will be taken on the proposed rule.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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. 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. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 15, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 2, 2005.

Richard Greene,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart SS—Texas

■ 2. The second table in § 52.2270(e) entitled ''EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP'' is amended as follows:

■ a. By removing the entry for ''Post 1999 Rate of Progress Plans and associated contingency measures'' for the Houston/Galveston, TX, area approved by EPA 11/14/01 at 66 FR 57195;

■ b. By adding two new entries to the end of the table for ''Post 1999 Rate of Progress Plans'' and for ''Revisions to the 1990 Base Year Inventory,'' both for the Houston/Galveston, TX area.

The additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal\effective date	EPA approval date	Comments
* *	* *	*	* *	*
Post 1999 Rate of Progress Plan ...	Houston/Galveston, TX	11/16/04	February 14, 2005. [Insert FR page number where document begins].	
Revisions to the 1990 Base Year Inventory.	Houston/Galveston, TX	11/16/04	February 14, 2005. [Insert FR page number where document begins].	

[FR Doc. 05–2791 Filed 2–11–05; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 303

[Docket No. FMCSA–2002–13248]

RIN 2126–AA79

Title VI Regulations for Federal Motor Carrier Safety Administration Financial Assistance Recipients

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim Final Rule (IFR); request for comments.

SUMMARY: FMCSA issues this Interim Final Rule (IFR) to clarify and modify the applicability of certain Federal Highway Administration (FHWA) and Departmental Title VI provisions that implement Title VI of the Civil Rights Act of 1964, and related nondiscrimination statutes, as they apply to FMCSA Federal financial assistance recipients. The ''savings provision'' of section 106(b) of the Motor Carrier Safety Improvement Act of 1999 provides the opportunity for this clarification and modification. As part of this initiative, FMCSA establishes a new Part 303 under 49 CFR chapter III, Subchapter A, for future FMCSA Title VI implementing regulations and any future guidelines on Title VI compliance.

This IFR will provide FMCSA with initial guidelines and procedures for implementing its Title VI procedures. This will be done by continuing to apply and use the Departmental umbrella Title VI regulations in 49 CFR part 21 to any program or activity for which Federal financial assistance is authorized under a law administered by FMCSA. FMCSA will remain subject to those Title VI requirements at the Departmental level, and will develop as needed further guidelines and procedures in accordance with the law to assure effective and consistent implementation for financially assisted recipients. FMCSA also removes itself from the FHWA Title VI regulations set forth at 23 CFR part 200, because they are not appropriate for FMCSA programs and activities. Doing so will avoid any potential confusion while not altering the substantive Title VI obligations of FMCSA and its grantees.

DATES: This Interim Final Rule is effective March 16, 2005. We must receive your comments by April 15, 2005.

ADDRESSES: You may submit comments identified by the FMCSA docket number and/or Regulatory Identification Number (RIN) of this interim rule by any one of the following methods:

- *Comments submitted by mail, in person, or Fax.*

U.S. Department of Transportation, Docket Management System (DMS) Facility, 400 Seventh Street, SW., Plaza Level, Washington, DC 20590; or *FAX* (202) 493'2251. You may examine the FMCSA docket, including any comments we have received, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Comments filed electronically.*

DMS Web site at *http://dms.dot.gov*; or

Federal eRulemaking Portal at *http://www.regulations.gov*. Follow instructions for submitting your comments.

- *Privacy Act:*

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted by on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

Waiver of General Notice of Proposed Rulemaking

FMCSA is issuing this Interim Final Rule (IFR) without prior notice and opportunity for comment pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows an agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. This IFR clarifies the Title VI authorities covering FMCSA programs by deleting references specific to only FHWA programs and by stating specifically the applicability of the Department-wide Title VI regulations to FMCSA. Doing so will avoid any potential confusion while not altering the substantive Title VI obligations of FMCSA and its grantees. Under these circumstances, FMCSA has determined that an opportunity for notice is unnecessary, impracticable, or contrary to the public interest. We will respond to any comments we receive, and will amend the IFR if comments warrant any changes.

FOR FURTHER INFORMATION CONTACT: Ms. Carmen Sevier, (202) 366–4330, Office of Civil Rights (MC–CR), FMCSA, 400 Seventh Street, SW., Washington, DC 20590; *Carmen.Sevier@fmcsa.dot.gov*. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In early October 1999, Congress prohibited the FHWA from spending appropriated funds to carry out the motor carrier safety functions and

8-hour Ozone Final Rule

Federal Register

Friday,
April 30, 2004

Part II

Environmental Protection Agency

40 CFR Part 81

40 CFR Parts 50, 51, and 81

8-Hour Ozone National Ambient Air Quality Standards; Final Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0083; FRL–7651–8]

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. The second rule will be published at a later date.

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/w1040218_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: Ms. Sharon Reinders, Designations, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5284 or by e-mail at: *reinders.sharon@epa.gov.*

Ms. Annie Nikbakht, Part 81 Code of Federal Regulations, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246 or by e-mail at: *nikbakht.annie@epa.gov.*

Mr. Doug Grano, Classifications, Office of Air Quality Planning and

Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–3292 or by e-mail at: *grano.doug@epa.gov*.

Mr. David Cole, Early Action Compacts, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5565 or by e-mail at: *cole.david@epa.gov*.

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
NO_X—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 (NO_X) 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: *http://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 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.

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

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[1] CAA 107(d)(1); TEA–21 § 6103(a).

[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.

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.*, NO_X 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]

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 NO_X 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 NO_X 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.

[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.''

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 part 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: *http://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. 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 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.)

[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).

[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).

[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, 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

[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.

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 NO_X and VOC emissions to date
December 31, 2007	Area attains 8-hour ozone NAAQS.

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 Web site 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 Web site 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 Web site 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 MAC 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 strategies 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

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
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
		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

TABLE 3.—DESIGNATION OF COUNTIES PARTICIPATING IN EARLY ACTION COMPACTS—Continued

State	Compact area (designated area)	County	Designation	Effective date
		Oconee County	Unclassifiable/Attainment	6/15/2004
SC	Catawba—B Part of York County, SC is in the Charlotte-Gastonia-Rock Hill, NC–SC non-attainment 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
		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
TN/GA	Chattanooga (Chattanooga, TN–GA) County, TN.	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	6/15/2004
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

TABLE 3.—DESIGNATION OF COUNTIES PARTICIPATING IN EARLY ACTION COMPACTS—Continued

State	Compact area (designated area)	County	Designation	Effective date
		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
		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
		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-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-referred	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.

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.

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 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 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 Web site 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 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

[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.

[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 Prtocol was revised December 11, 2002 based on comments from EPA.

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 NO_X 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 NO_X 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 NO_X 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, NC 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.

Dated: April 15, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 81, subpart C is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

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

Subpart C—Section 107 Attainment Status Designations

■ 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.

PART 81—[AMENDED]

■ 2a. In § 81.301, the table entitled ''Alabama—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.301 Alabama.

* * * * *

ALABAMA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Birmingham, AL:				
Jefferson County	.....	Nonattainment	.....	Subpart 1.
Shelby County	.....	Nonattainment	.....	Subpart 1.
Rest of State	.....	Unclassifiable/Attainment.		
Autauga County				
Baldwin County				
Barbour County				
Bibb County				
Blount County				
Bullock County				
Butler County				
Calhoun County				
Chambers County				
Cherokee County				
Chilton County				
Choctaw County				
Clarke County				
Clay County				
Cleburne County				
Coffee County				
Colbert County				
Conecuh County				
Coosa County				
Covington County				
Crenshaw County				
Cullman County				
Dale County				
Dallas County				
DeKalb County				
Elmore County				
Escambia County				
Etowah County				
Fayette County				
Franklin County				
Geneva County				
Greene County				
Hale County				
Henry County				
Houston County				
Jackson County				
Lamar County				
Lauderdale County				
Lawrence County				
Lee County				
Limestone County				
Lowndes County				
Macon County				
Madison County				
Marengo County				
Marion County				
Marshall County				
Mobile County				
Monroe County				
Montgomery County				
Morgan County				
Perry County				
Pickens County				
Pike County				
Randolph County				
Russell County				
St. Clair County				
Sumter County				
Talladega County				
Tallapoosa County				
Tuscaloosa County				
Walker County				
Washington County				
Wilcox County				
Winston County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

■ 3. In § 81.302, the table entitled ''Alaska—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.302 Alaska.

* * * * *

ALASKA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 08 Cook Inlet Intrastate		Unclassifiable/Attainment.		
Anchorage Borough				
Kenai Peninsula Borough				
Matanuska-Susitna Borough				
AQCR 09 Northern Alaska Intrastate		Unclassifiable/Attainment.		
Denali Borough				
Fairbanks North Star Borough				
Nome Census Area				
North Slope Borough				
Northwest Arctic Borough				
Southeast Fairbanks Census Area				
Yukon-Koyukuk Census Area				
AQCR 10 South Central Alaska Intrastate		Unclassifiable/Attainment.		
Aleutians East Borough				
Aleutians West Census Area				
Bethel Census Area				
Bristol Bay Borough				
Dillingham Census Area				
Kodiak Island Borough				
Lake and Peninsula Borough				
Valdez-Cordova Census Area				
Wade Hampton Census Area				
AQCR 11 Southeastern Alaska Intrastate		Unclassifiable/Attainment.		
Haines Borough				
Juneau Borough				
Ketchikan Gateway Borough				
Prince of Wales-Outer Ketchikan Census Area				
Sitka Borough				
Skagway-Hoonah-Angoon Census Area				
Wrangell-Petersburg Census Area				
Yakutat Borough				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 4. In § 81.303, the table entitled ''Arizona—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Phoenix-Mesa, AZ:				
Maricopa County (part)		Nonattainment		Subpart 1
T1N, R1E (except that portion in Indian Country); T1N, R2E; T1N, R3E; T1N, R4E; T1N, R5E; T1N, R6E; T1N, R7E; T1N, R1W; T1N, R2W; T1N, R3W; T1N, R4W; T1N, R5W; T1N, R6W; T2N, R1E; T2N, R2E; T2N, R3E; T2N, R4E; T2N, R5E, T2N, R6E; T2N, R7E; T2N, R8E; T2N, R9E; T2N, R10E; T2N, R11E; T2N, R12E (except that portion in Gila County); T2N, R13E (except that portion in Gila County); T2N, R1W; T2N, R2W; T2N, R3W; T2N, R4W; T2N, R5W; T2N, R6W; T2N, R7W; T3N, R1E; T3N, R2E; T3N,				
R3E; T3N, R4E; T3N, R5E; T3N, R6E; T3N, R7E; T3N, R8E; T3N, R9E; T3N, R10E (except that portion in Gila County);.				

ARIZONA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
T3N, R11E (except that portion in Gila County); T3N, R12E (except that portion in Gila County); T3N, R1W; T3N, R2W; T3N, R3W; T3N, R4W; T3N, R5W; T3N, R6W; T4N, R1E; T4N, R2E; T4N, R3E; T4N, R4E; T4N, R5E; T4N, R6E; T4N, R7E; T4N, R8E; T4N, R9E; T4N, R10E (except that portion in Gila County); T4N, R11E (except that portion in Gila County); T4N, R12E (except that portion in Gila County); T4N, R1W; T4N, R2W; T4N, R3W; T4N, R4W; T4N, R5W; T4N, R6W; T5N, R1E; T5N, R2E; T5N, R3E; T5N, R4E; T5N, R5E; T5N, R6E; T5N, R7E; T5N, R8E; T5N, R9E (except that portion in Gila County); T5N, R10E (except that portion in Gila County); T5N, R1W; T5N, R2W; T5N, R3W; T5N, R4W; T5N, R5W; T6N, R1E (except that portion in Yavapai County); T6N, R2E; T6N, R3E;				
T6N, R4E; T6N, R5E; T6N, R6E; T6N, R7E; T6N, R8E; T6N, R9E (except that portion in Gila County); T6N, R10E (except that portion in Gila County); T6N, R1W (except that portion in Yavapai County); T6N, R2W; T6N, R3W; T6N, R4W T6N, R5W T7N, R1E (except that portion in Yavapai County); T7N, R2E; (except that portion in Yavapai County); T7N, R3E; T7N, R4E; T7N, R5E; T7N, R6E; T7N, R7E; T7N, R8E; T7N, R9E (except that portion in Gila County); T7N, R1W (except that portion in Yavapai County); T7N, R2W (except that portion in Yavapai County); T8N, .				
R2E (except that portion in Yavapai County); T8N, R3E (except that portion in Yavapai County); T8N, R4E (except that portion in Yavapai County); T8N, R5E (except that portion in Yavapai County); T8N, R6E (except that portion in Yavapai County); T8N, R7E (except that portion in Yavapai County); T8N, R8E (except that portion in Yavapai and Gila Counties); T8N, R9E (except that portion in Yavapai and Gila Counties); T1S, R1E (except that portion in Indian Country); T1S, R2E (except that portion in Pinal County and in Indian Country); T1S, R3E; T1S, R4E; T1S, R5E; T1S, R6E; T1S, R7E; T1S, R1W; T1S, R2W; T1S, R3W; T1S, R4W; T1S, R5W; T1S, R6W; T2S, R1E (except that portion in Indian Country); T2S, R5E; T2S, R6E; T2S, R7E; T2S, R1W; T2S, R2W; T2S, R3W; T2S, R4W; T2S, R5W; T3S, R1E; T3S, R1W; T3S, R2W; T3S, R3W; T3S, R4W; T3S, R5W; T4S, R1E; T4S, R1W; T4S, R2W; T4S, R3W; T4S, R4W; T4S, R5W.				
Pinal County (part)		Nonattainment		Subpart 1
Apache Junction: T1N, R8E; T1S, R8E (Sections 1 through 12)				
Rest of State		Unclassifiable/Attainment		

ARIZONA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Apache County				
Cochise County				
Coconino County				
Gila County				
Graham County				
Greenlee County				
La Paz County				
Maricopa County (part) remainder				
Mohave County				
Navajo County				
Pima County				
Pinal County (part) remainder				
Santa Cruz County				
Yavapai County				
Yuma County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 5. In § 81.304, the table entitled ''Arkansas-Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.304 Arkansas.

* * * * *

ARKANSAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Memphis, TN–AR:				
(AQCR 018 Metropolitan Memphis Interstate)				
Crittenden County	.....	Nonattainment	.....	Subpart 2/Moderate.
AQCR 016 Central Arkansas Intrastate (part)	.....	Unclassifiable/Attainment.		
Pulaski County				
AQCR 016 Central Arkansas Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Chicot County				
Clark County				
Cleveland County				
Conway County				
Dallas County				
Desha County				
Drew County				
Faulkner County				
Garland County				
Grant County				
Hot Spring County				
Jefferson County				
Lincoln County				
Lonoke County				
Perry County				
Pope County				
Saline County				
Yell County				
AQCR 017 Metropolitan Fort Smith Interstate	.....	Unclassifiable/Attainment.		
Benton County				
Crawford County				
Sebastian County				
Washington County				
AQCR 019 Monroe-El Dorado Interstate	.....	Unclassifiable/Attainment.		
Ashley County				
Bradley County				
Calhoun County				
Nevada County				
Ouachita County				
Union County				
AQCR 020 Northeast Arkansas Intrastate	.....	Unclassifiable/Attainment.		
Arkansas County				
Clay County				
Craighead County				
Cross County				

ARKANSAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Greene County				
Independence County				
Jackson County				
Lawrence County				
Lee County				
Mississippi County				
Monroe County				
Phillips County				
Poinsett County				
Prairie County				
Randolph County				
St. Francis County				
Sharp County				
White County				
Woodruff County				
AQCR 021 Northwest Arkansas Intrastate	.....	Unclassifiable/Attainment.		
Baxter County				
Boone County				
Carroll County				
Cleburne County				
Franklin County				
Fulton County				
Izard County				
Johnson County				
Logan County				
Madison County				
Marion County				
Montgomery County				
Newton County				
Pike County				
Polk County				
Scott County				
Searcy County				
Stone County				
Van Buren County				
AQCR 022 Shreveport-Texarkana-Tyler Interstate.	.....	Unclassifiable/Attainment.		
Columbia County				
Hempstead County				
Howard County				
Lafayette County				
Little River County				
Miller County				
Sevier County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 6. In § 81.305, the table entitled ''California—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Amador and Calaveras Cos., CA:				
(Central Mountain Cos.)				
Amador County	.....	Nonattainment	.....	Subpart 1.
Calaveras County	.....	Nonattainment	.....	Subpart 1.
Chico, CA:				
Butte County	.....	Nonattainment	.....	Subpart 1.
Kern County (Eastern Kern), CA	.....	Nonattainment	.....	Subpart 1.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Kern County (part)				
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
Imperial Co., CA:				
Imperial County	.....	Nonattainment	.....	Subpart 2/Marginal.
Los Angeles—South Coast Air Basin, CA:	.....	Nonattainment	.....	Subpart 2/Severe 17.
Los Angeles County (part)	.....	Nonattainment	.....	Subpart 2/Severe 17.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Orange County	.....	Nonattainment	.....	Subpart 2/Severe 17.
Riverside County (part)	.....	Nonattainment	.....	Subpart 2/Severe 17.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line.				
San Bernardino County (part)	.....	Nonattainment	.....	Subpart 2/Severe 17.
That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.				
Los Angeles-San Bernardino Cos.(W Mojave Desert), CA:	.....	Nonattainment	.....	Subpart 2/Moderate.
Los Angeles County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Los Angeles County which lies north and east of a line described as follows: Beginning at the Los Angeles—San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles—Kern County boundary.				
San Bernardino County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
That portion of San Bernardino County which lies north and east of a line described as follows: Beginning at the San Bernardino—Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino— Los Angeles County boundary; And that portion of San Bernardino County which lies south and west of a line described as follows: latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.				
Mariposa and Tuolumne Cos., CA:				
(Southern Mountain Counties)				
Mariposa County	.....	Nonattainment	.....	Subpart 1.
Tuolumne County	.....	Nonattainment	.....	Subpart 1.
Riverside Co. (Coachella Valley), CA;	.....	Nonattainment	.....	Subpart 2/Serious.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Riverside County (part) That portion of Riverside County which lies to the east of a line described as follows: Beginning at the Riverside—San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line. And that portion of Riverside County which lies to the west of a line described as follows: That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: Beginning at the Riverside—Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, elevation 4504′; then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; then north along the range line common to Range 14 East and Range 13 East; then west and northwest along the ridge line to Monument Mountain, elevation 4834′; then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elev. 5814′; then northwest along the ridge line to the Riverside—San Bernardino County line.				
Sacramento Metro, CA	.....	Nonattainment	.....	Subpart 2/Serious.
El Dorado County (part) All portions of the county except that portion of El Dorado County within the drainage area naturally tributary to Lake Tahoe including said Lake.				
Placer County (part)	.....	Nonattainment	.....	Subpart 2/Serious.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
All portions of the county except that portion of Placer County within the drainage area naturally tributary to Lake Tahoe including said Lake, plus that area in the vicinity of the head of the Truckee River described as follows: Commencing at the point common to the aforementioned drainage area crestline and the line common to Townships 15 North and 16 North, Mount Diablo Base and Meridian, and following that line in a westerly direction to the northwest corner of Section 3, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, thence south along the west line of Sections 3 and 10, Township 15 North, Range 16 East, Mount Diablo Base and Meridian, to the intersection with the said drainage area crestline, thence following the said drainage area boundary in a southeasterly, then northeasterly direction to and along the Lake Tahoe Dam, thence following the said drainage area crestline in a northeasterly, then northwesterly direction to the point of beginning.				
Sacramento County	.....	Nonattainment	.....	Subpart 2/Serious.
Solano County (part)	.....	Nonattainment	.....	Subpart 2/Serious.
That portion of Solano County which lies north and east of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said ¼ section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West, thence east along a line common to Township 5 North and Township 6 North to the northeast corner of Section 3, Township 5 North, Range 1 East, thence south along section lines to the southeast corner of Section 10, Township 3 North, Range 1 East, thence east along section lines to the south ¼ corner of Section 8, Township 3 North, Range 2 East, thence east to the boundary between Solano and Sacramento Counties.				
Sutter County (part)	.....	Nonattainment	.....	Subbpart 2/Serious.
Portion south of a line connecting the northern border of Yolo County to the SW tip of Yuba County and continuing along the southern Yuba County border to Placer County.				
Yolo County	.....	Nonattainment	.....	Subpart 2/Serious.
San Diego, CA	.....	Nonattainment	.....	Subpart 1.
San Diego County (part)				
That portion of San Diego County that excludes the areas listed below: La Posta Areas #1 and #2 [b], Cuyapaipe Area [b], Manzanita Area [b], Campo Areas #1 and #2 [b]				
San Francisco Bay Area, CA	.....	Nonattainment	.....	Subpart 2/Marginal.
Alameda County	.....	Nonattainment	.....	Subpart 2/Marginal.
Contra Costa County	.....	Nonattainment	.....	Subpart 2/Marginal.
Marin County	.....	Nonattainment	.....	Subpart 2/Marginal.
Napa County	.....	Nonattainment	.....	Subpart 2/Marginal.
San Francisco County	.....	Nonattainment	.....	Subpart 2/Marginal.
San Mateo County	.....	Nonattainment	.....	Subpart 2/Marginal.
Santa Clara County	.....	Nonattainment	.....	Subpart 2/Marginal.
Solano County (part)	.....	Nonattainment	.....	Subpart 2/Marginal.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Portion of Solano County which lies south and west of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34, T6N, R2W, M.D.B. & M., thence east along said ¼ section line to the east boundary of Section 36, T6N, R2W, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, T5N, R1W, thence east along a line common to T5N and T6N to the northeast corner of Section 3, T5N, R1E, thence south along section lines to the southeast corner of Section 10, T3N, R1E, thence east along section lines to the south ¼ corner of Section 8, T3N, R2E, thence east to the boundary between Solano and Sacramento Counties.				
Sonoma County (part)	.....	Nonattainment	.....	Subpart 2/Marginal.
That portion of Sonoma County which lies south and east of a line described as follows: Beginning at the southeasterly corner of the Rancho Estero Americano, being on the boundary line between Marin and Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive; thence running along said boundary of Rancho Canada de Jonive westerly, northerly and easterly to its intersection with the easterly line of Graton Road; thence running along the easterly and southerly line of Graton Road, northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road; thence running northerly along said easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road; thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Rancho Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the Township line common to Townships 8 and 9 North, M.D.M.; thence running easterly along said township line to its intersection with the boundary line between Sonoma and Napa Counties.				
San Joaquin Valley, CA:				
Fresno County	.....	Nonattainment	.....	Subpart 2/Serious.
Kern County (part)	.....	Nonattainment	.....	Subpart 2/Serious.

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
That portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of S. 3, T. 11 N., R. 17 W.;then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of S. 34, T. 32 S., R. 30 E., Mount Diablo Base and Meridian; then north to the northwest corner of S. 35, T. 31 S., R. 30 E.; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of S. 18, T. 31 S., R. 31 E.; then east to the southeast corner of S. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of S. 6, T. 29 S., R. 32 E.; then east to the southwest corner of S. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of S. 6, T. 28 S., R. 32 E., then west to the southeast corner of S. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.				
Kings County	.....	Nonattainment	.....	Subpart 2/Serious.
Madera County	.....	Nonattainment	.....	Subpart 2/Serious.
Merced County	.....	Nonattainment	.....	Subpart 2/Serious.
San Joaquin County	.....	Nonattainment	.....	Subpart 2/Serious.
Stanislaus County	.....	Nonattainment	.....	Subpart 2/Serious.
Tulare County	.....	Nonattainment	.....	Subpart 2/Serious.
Sutter County (part), CA:				
Sutter County (part)	.....	Nonattainment	.....	Subpart 1.
(Sutter Buttes) That portion of the Sutter Buttes mountain range at or above 2,000 feet in elevation.				
Remainder of County	.....	Unclassifiable/Attainment.		
Ventura County, CA:				
Ventura County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
That part of Ventura County excluding the Channel Islands of Anacapa and San Nicolas Islands.				
Remainder of County	.....	Unclassifiable/Attainment.		
Nevada County (Western part), CA	.....	Nonattainment	.....	Subpart 1.
Nevada County (part)				
That portion of Nevada County, which lies west of a line, described as follows: beginning at the Nevada-Placer County boundary and running north along the western boundaries of Sections 24, 13, 12, 1, Township 17 North, Range 14 East, Mount Diablo Base and Meridian, and Sections 36, 25, 24, 13, 12, Township 18 North, Range 14 East to the Nevada-Sierra County boundary.				
Santa Barbara-Santa Maria-Lompoc, CA:				
Santa Barbara County	.....	Unclassifiable/Attainment.		
Mohave Desert Air Basin:				
Riverside County (part) remainder	.....	Unclassifiable/Attainment.		
San Bernardino County (part) remainder	.....	Unclassifiable/Attainment.		
Great Basin Valleys Air Basin	.....	Unclassifiable/Attainment.		

CALIFORNIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Alpine County				
Inyo County				
Mono County				
Lake County Air Basin		Unclassifiable/Attainment.		
Lake County				
Lake Tahoe Air Basin		Unclassifiable/Attainment.		
El Dorado County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Placer County (part)				
Lake Tahoe Area: As described under 40 CFR 81.275.				
Monterey Bay Area		Unclassifiable/Attainment.		
Monterey County				
San Benito County				
Santa Cruz County				
Mountain Counties Air Basin (remainder of):				
Nevada County (part) remainder		Unclassifiable/Attainment.		
Plumas County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		
North Coast Air Basin		Unclassifiable/Attainment.		
Del Norte County				
Humboldt County				
Mendocino County				
Sonoma County (part) remainder				
Trinity County				
Northeast Plateau Air Basin		Unclassifiable/Attainment.		
Lassen County				
Modoc County				
Siskiyou County				
Sacramento Valley Air Basin (remainder of):				
Colusa County		Unclassifiable/Attainment.		
Glenn County		Unclassifiable/Attainment.		
Shasta County		Unclassifiable/Attainment.		
Tehama County		Unclassifiable/Attainment.		
Yuba County		Unclassifiable/Attainment.		
South Central Coast Air Basin: (remainder of)				
Channel Islands		Unclassifiable/Attainment.		
San Luis Obispo County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] The boundaries for these designated areas are based on coordinates of latitude and longitude derived from EPA Region 9's GIS database and are illustrated in a map entitled ''Eastern San Diego County Attainment Areas for the 8-Hour Ozone NAAQS,'' dated March 9, 2004, including an attached set of coordinates. The map and attached set of coordinates are available at EPA's Region 9 Air Division office. The designated areas roughly approximate the boundaries of the reservations for these tribes, but their inclusion in this table is intended for CAA planning purposes only and is not intended to be a federal determination of the exact boundaries of the reservations. Also, the specific listing of these tribes in this table does not confer, deny, or withdraw Federal recognition of any of the tribes so listed nor any of the tribes not listed.
[1] This date is June 15, 2004, unless otherwise noted.

■ 7. In § 81.306, the table entitled ''Colorado-Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.306 Colorado.

* * * * *

COLORADO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Denver-Boulder-Greeley-Ft.Collins-Love., CO:				
Adams County	(2)	Nonattainment	(2)	Subpart 1.
Arapahoe County	(2)	Nonattainment	(2)	Subpart 1.
Boulder County (includes part of Rocky Mtn. Nat. Park).	(2)	Nonattainment	(2)	Subpart 1.
Broomfield County	(2)	Nonattainment	(2)	Subpart 1.
Denver County	(2)	Nonattainment	(2)	Subpart 1.
Douglas County	(2)	Nonattainment	(2)	Subpart 1.
Jefferson County	(2)	Nonattainment	(2)	Subpart 1.

COLORADO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Larimer County (part) (includes part of Rocky Mtn. Nat. Park).	([2])	Nonattainment	([2])	Subpart 1.
That portion of the county that lies south of a line described as follows: Beginning at a point on Larimer County's eastern boundary and Weld County's western boundary intersected by 40 degrees, 42 minutes, and 47.1 seconds north latitude, proceed west to a point defined by the intersection of 40 degrees, 42 minutes, 47.1 seconds north latitude and 105 degrees, 29 minutes, and 40.0 seconds west longitude, thence proceed south on 105 degrees, 29 minutes, 40.0 seconds west longitude to the intersection with 40 degrees, 33 minutes and 17.4 seconds north latitude, thence proceed west on 40 degrees, 33 minutes, 17.4 seconds north latitude until this line intersects Larimer County's western boundary and Grand County's eastern boundary.				
Weld County (part)	([2])	Nonattainment	([2])	Subpart 1.
That portion of the county that lies south of a line described as follows: Beginning at a point on Weld County's eastern boundary and Logan County's western boundary intersected by 40 degrees, 42 minutes, 47.1 seconds north latitude, proceed west on 40 degrees, 42 minutes, 47.1 seconds north latitude until this line intersects Weld County's western boundary and Larimer County's eastern boundary.				
State AQCR 01		Unclassifiable/Attainment		
Logan County				
Phillips County				
Sedgwick County				
Washington County				
Yuma County				
State AQCR 03 (remainder of)		Unclassifiable/Attainment		
Clear Creek County				
Gilpin County				
State AQCR 11		Unclassifiable/Attainment		
Garfield County				
Mesa County				
Moffat County				
Rio Blanco County				
Rest of State		Unclassifiable/Attainment		
Alamosa County				
Archuleta County				
Baca County				
Bent County				
Chaffee County				
Cheyenne County				
Conejos County				
Costilla County				
Crowley County				
Custer County				
Delta County				
Dolores County				
Eagle County				
El Paso County				
Elbert County				
Fremont County				
Grand County (includes portion of W. Rocky Mtn. Nat. Park)				
Gunnison County				
Hinsdale County				
Huerfano County				
Jackson County				
Kiowa County				
Kit Carson County				
La Plata County				
Lake County				

COLORADO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Larimer County (part) remainder				
Las Animas County				
Lincoln County				
Mineral County				
Montezuma County				
Montrose County				
Morgan County				
Otero County				
Ouray County				
Park County				
Pitkin County				
Prowers County				
Pueblo County				
Rio Grande County				
Routt County				
Saguache County				
San Juan County				
San Miguel County				
Summit County				
Teller County				
Weld County (part) remainder				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 8. In § 81.307, the table entitled ''Connecticut—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.307 Connecticut.

* * * * *

CONNECTICUT—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Greater Connecticut, CT:				
Hartford County		Nonattainment		Subpart 2/Moderate.
Litchfield County		Nonattainment		Subpart 2/Moderate.
New London County		Nonattainment		Subpart 2/Moderate.
Tolland County		Nonattainment		Subpart 2/Moderate.
Windham County		Nonattainment		Subpart 2/Moderate.
New York–N. New Jersey–Long Island, NY–NJ–CT:				
Fairfield County		Nonattainment		Subpart 2/Moderate.
Middlesex County		Nonattainment		Subpart 2/Moderate.
New Haven County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 9. In § 81.308, the table entitled ''Delaware—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.308 Delaware.

* * * * *

DELAWARE—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Philadelphia–Wilmington–Atlantic Ci, PA–NJ–MD–DE:				
Kent County		Nonattainment		Subpart 2/Moderate.
New Castle County		Nonattainment		Subpart 2/Moderate.
Sussex County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 10. In § 81.309, the table entitled ''District of Columbia—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.309 District of Columbia.

* * * * *

DISTRICT OF COLUMBIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Washington, DC–MD–VA:				
District of Columbia		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 11. In § 81.310, the table entitled ''Florida—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.310 Florida.

* * * * *

FLORIDA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment		
Alachua County				
Baker County				
Bay County				
Bradford County				
Brevard County				
Broward County				
Calhoun County				
Charlotte County				
Citrus County				
Clay County				
Collier County				
Columbia County				
DeSoto County				
Dixie County				
Duval County				
Escambia County				
Flagler County				
Franklin County				
Gadsden County				
Gilchrist County				
Glades County				
Gulf County				
Hamilton County				
Hardee County				
Hendry County				
Hernando County				
Highlands County				
Hillsborough County				
Holmes County				
Indian River County				
Jackson County				
Jefferson County				
Lafayette County				
Lake County				
Lee County				
Leon County				
Levy County				
Liberty County				
Madison County				
Manatee County				
Marion County				
Martin County				
Miami-Dade County				
Monroe County				
Nassau County				
Okaloosa County				
Okeechobee County				
Orange County				

FLORIDA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Osceola County				
Palm Beach County				
Pasco County				
Pinellas County				
Polk County				
Putnam County				
St. Johns County				
St. Lucie County				
Santa Rosa County				
Sarasota County				
Seminole County				
Sumter County				
Suwannee County				
Taylor County				
Union County				
Volusia County				
Wakulla County				
Walton County				
Washington County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 12. In § 81.311, the table entitled ''Georgia—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.311 Georgia.

* * * * *

GEORGIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Atlanta, GA:				
Barrow County		Nonattainment		Subpart 2/Marginal.
Bartow County		Nonattainment		Subpart 2/Marginal.
Carroll County		Nonattainment		Subpart 2/Marginal.
Cherokee County		Nonattainment		Subpart 2/Marginal.
Clayton County		Nonattainment		Subpart 2/Marginal.
Cobb County		Nonattainment		Subpart 2/Marginal.
Coweta County		Nonattainment		Subpart 2/Marginal.
DeKalb County		Nonattainment		Subpart 2/Marginal.
Douglas County		Nonattainment		Subpart 2/Marginal.
Fayette County		Nonattainment		Subpart 2/Marginal.
Forsyth County		Nonattainment		Subpart 2/Marginal.
Fulton County		Nonattainment		Subpart 2/Marginal.
Gwinnett County		Nonattainment		Subpart 2/Marginal.
Hall County		Nonattainment		Subpart 2/Marginal.
Henry County		Nonattainment		Subpart 2/Marginal.
Newton County		Nonattainment		Subpart 2/Marginal.
Paulding County		Nonattainment		Subpart 2/Marginal.
Rockdale County		Nonattainment		Subpart 2/Marginal.
Spalding County		Nonattainment		Subpart 2/Marginal.
Walton County		Nonattainment		Subpart 2/Marginal.
Macon, GA:				
Bibb County		Nonattainment		Subpart 1.
Monroe County (part)		Nonattainment		Subpart 1.
From the point where Bibb and Monroe Counties meet at the Ocmulgee River, follow the Ocmulgee River boundary north to 33 degrees, 05 minutes, due west to 83 degrees, 50 minutes, due south to the intersection with Georgia Hwy 18, east along Georgia Hwy 18 to US Hwy 23/ Georgia Hwy 87, south on US Hwy 23/ Georgia Hwy 87 to the Monro/Bibb County line, and east to the intersection with the Ocmulgee River				
Chattanooga, TN–GA:				
Catoosa County		Nonattainment		Subpart 1.

GEORGIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Murray Co (Chattahoochee Nat Forest), GA:				
Murray County (part)	.....	Nonattainment	.....	Subpart 1.
Rest of State	.....	Unclassifiable/Attainment		
Appling County.				
Atkinson County				
Bacon County				
Baker County				
Baldwin County				
Banks County				
Ben Hill County				
Berrien County				
Bleckley County				
Brantley County				
Brooks County				
Bryan County				
Bulloch County				
Burke County				
Butts County				
Calhoun County				
Camden County				
Candler County				
Charlton County				
Chatham County				
Chattahoochee County				
Chattooga County				
Clarke County				
Clay County				
Clinch County				
Coffee County				
Colquitt County				
Columbia County				
Cook County				
Crawford County				
Crisp County				
Dade County				
Dawson County				
Decatur County				
Dodge County				
Dooly County				
Dougherty County				
Early County				
Echols County				
Effingham County				
Elbert County				
Emanuel County				
Evans County				
Fannin County				
Floyd County				
Franklin County				
Gilmer County				
Glascock County				
Glynn County				
Gordon County				
Grady County				
Greene County				
Habersham County				
Hancock County				
Haralson County				
Harris County				
Hart County				
Heard County				
Houston County				
Irwin County				
Jackson County				
Jasper County				
Jeff Davis County				
Jefferson County				
Jenkins County				
Johnson County				
Jones County				

GEORGIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Lamar County				
Lanier County				
Laurens County				
Lee County				
Liberty County				
Lincoln County				
Long County				
Lowndes County				
Lumpkin County				
Macon County				
Madison County				
Marion County				
McDuffie County				
McIntosh County				
Meriwether County				
Miller County				
Mitchell County				
Monroe County (part) remainder				
Montgomery County				
Morgan County				
Murray County (part) remainder				
Muscogee County				
Oconee County				
Oglethorpe County				
Peach County				
Pickens County				
Pierce County				
Pike County				
Polk County				
Pulaski County				
Putnam County				
Quitman County				
Rabun County				
Randolph County				
Richmond County				
Schley County				
Screven County				
Seminole County				
Stephens County				
Stewart County				
Sumter County				
Talbot County				
Taliaferro County				
Tattnall County				
Taylor County				
Telfair County				
Terrell County				
Thomas County				
Tift County				
Toombs County				
Towns County				
Treutlen County				
Troup County				
Turner County				
Twiggs County				
Union County				
Upson County				
Walker County				
Ware County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
White County				
Whitfield County				
Wilcox County				
Wilkes County				
Wilkinson County				

GEORGIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Worth County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 13. In § 81.312, the table entitled ''Hawaii—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.312 Hawaii.

* * * * *

HAWAII—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable Attainment		
Hawaii County				
Honolulu County				
Kalawao County				
Kauai County				
Maui County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 14. In § 81.313, the table entitled ''Idaho—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.313 Idaho.

* * * * *

IDAHO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 61 Eastern Idaho Intrastate		Unclassifiable/Attainment		
Bannock County				
Bear Lake County				
Bingham County				
Bonneville County				
Butte County				
Caribou County				
Clark County				
Franklin County				
Fremont County				
Jefferson County				
Madison County				
Oneida County				
Power County				
Teton County				
AQCR 62 E Washington-N Idaho Interstate		Unclassifiable/Attainment		
Benewah County				
Kootenai County				
Latah County				
Nez Perce County				
Shoshone County				
AQCR 63 Idaho Intrastate		Unclassifiable/Attainment		
Adams County				
Blaine County				
Boise County				
Bonner County				
Boundary County				
Camas County				
Cassia County				
Clearwater County				
Custer County				
Elmore County				
Gem County				
Gooding County				

IDAHO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Idaho County				
Jerome County				
Lemhi County				
Lewis County				
Lincoln County				
Minidoka County				
Owyhee County				
Payette County				
Twin Falls County				
Valley County				
Washington County				
AQCR 64 Metropolitan Boise Interstate	.....	Unclassifiable/Attainment		
Ada County				
Canyon County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 15. In § 81.314, the table entitled ''Illinois—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.314 Illinois.

* * * * *

ILLINOIS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County, IL-IN:				
Cook County	.....	Nonattainment	.....	Subpart 2/Moderate.
DuPage County	.....	Nonattainment	.....	Subpart 2/Moderate.
Grundy County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
Aux Sable Township Goose Lake Township				
Kane County	.....	Nonattainment	.....	Subpart 2/Moderate.
Kendall County (part)	.....	Nonattainment	.....	Subpart 2/Moderate.
Oswego Township				
Lake County	.....	Nonattainment	.....	Subpart 2/Moderate.
McHenry County	.....	Nonattainment	.....	Subpart 2/Moderate.
Will County	.....	Nonattainment	.....	Subpart 2/Moderate.
St. Louis, MO-IL:				
Jersey County	.....	Nonattainment	.....	Subpart 2/Moderate.
Madison County	.....	Nonattainment	.....	Subpart 2/Moderate.
Monroe County	.....	Nonattainment	.....	Subpart 2/Moderate.
St. Clair County	.....	Nonattainment	.....	Subpart 2/Moderate.
Rest of State				
Adams County	.....	Unclassifiable/Attainment.		
Alexander County	.....	Unclassifiable/Attainment.		
Bond County	.....	Unclassifiable/Attainment.		
Boone County	.....	Unclassifiable/Attainment.		
Brown County	.....	Unclassifiable/Attainment.		
Bureau County	.....	Unclassifiable/Attainment.		
Calhoun County	.....	Unclassifiable/Attainment.		
Carroll County	.....	Unclassifiable/Attainment.		
Cass County	.....	Unclassifiable/Attainment.		
Champaign County	.....	Unclassifiable/Attainment.		
Christian County	.....	Unclassifiable/Attainment.		
Clark County	.....	Unclassifiable/Attainment.		
Clay County	.....	Unclassifiable/Attainment.		
Clinton County	.....	Unclassifiable/Attainment.		
Coles County	.....	Unclassifiable/Attainment.		
Crawford County	.....	Unclassifiable/Attainment.		
Cumberland County	.....	Unclassifiable/Attainment.		
De Witt County	.....	Unclassifiable/Attainment.		
DeKalb County	.....	Unclassifiable/Attainment.		
Douglas County	.....	Unclassifiable/Attainment.		
Edgar County	.....	Unclassifiable/Attainment.		
Edwards County	.....	Unclassifiable/Attainment.		
Effingham County	.....	Unclassifiable/Attainment.		
Fayette County	.....	Unclassifiable/Attainment.		
Ford County	.....	Unclassifiable/Attainment.		

ILLINOIS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Greene County		Unclassifiable/Attainment.		
Grundy County (part)		Unclassifiable/Attainment.		
All townships except Aux Sable and Goose Lake.				
Hamilton County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Henderson County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Iroquois County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jasper County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jo Daviess County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Kankakee County		Unclassifiable/Attainment.		
Kendall County (part)		Unclassifiable/Attainment.		
All townships except Oswego				
Knox County		Unclassifiable/Attainment.		
La Salle County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lee County		Unclassifiable/Attainment.		
Livingston County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Macon County		Unclassifiable/Attainment.		
Macoupin County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Mason County		Unclassifiable/Attainment.		
Massac County		Unclassifiable/Attainment.		
McDonough County		Unclassifiable/Attainment.		
McLean County		Unclassifiable/Attainment.		
Menard County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Moultrie County		Unclassifiable/Attainment.		
Ogle County		Unclassifiable/Attainment.		
Peoria County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Piatt County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Pope County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Randolph County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Rock Island County		Unclassifiable/Attainment.		
Saline County		Unclassifiable/Attainment.		
Sangamon County		Unclassifiable/Attainment.		
Schuyler County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Stark County		Unclassifiable/Attainment.		
Stephenson County		Unclassifiable/Attainment.		
Tazewell County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Vermilion County		Unclassifiable/Attainment.		
Wabash County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
White County		Unclassifiable/Attainment.		
Whiteside County		Unclassifiable/Attainment.		
Williamson County		Unclassifiable/Attainment.		
Winnebago County		Unclassifiable/Attainment.		
Woodford County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.

[1] This date is June 15, 2004, unless otherwise noted.

■ 16. In § 81.315, the table entitled ''Indiana—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.315 Indiana.

INDIANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Chicago-Gary-Lake County, IL–IN:				
Lake County		Nonattainment		Subpart 2/Moderate.
Porter County		Nonattainment		Subpart 2/Moderate.
Cincinnati-Hamilton, OH–KY–IN:				
Dearborn County (part) Lawrenceburg Township		Nonattainment		Subpart 1.
Evansville, IN:				
Vanderburgh County		Nonattainment		Subpart 1.
Warrick County		Nonattainment		Subpart 1.
Fort Wayne, IN:				
Allen County		Nonattainment		Subpart 1.
Greene Co., IN:				
Greene County		Nonattainment		Subpart 1.
Indianapolis, IN:				
Boone County		Nonattainment		Subpart 1.
Hamilton County		Nonattainment		Subpart 1.
Hancock County		Nonattainment		Subpart 1.
Hendricks County		Nonattainment		Subpart 1.
Johnson County		Nonattainment		Subpart 1.
Madison County		Nonattainment		Subpart 1.
Marion County		Nonattainment		Subpart 1.
Morgan County		Nonattainment		Subpart 1.
Shelby County		Nonattainment		Subpart 1.
Jackson Co., IN:				
Jackson County		Nonattainment		Subpart 1.
La Porte Co., IN:				
La Porte County		Nonattainment		Subpart 2/Moderate.
Louisville, KY–IN:				
Clark County		Nonattainment		Subpart 1.
Floyd County		Nonattainment		Subpart 1.
Muncie, IN:				
Delaware County		Nonattainment		Subpart 1.
South Bend-Elkhart, IN:				
Elkhart County		Nonattainment		Subpart 1.
St. Joseph County		Nonattainment		Subpart 1.
Terre Haute, IN:				
Vigo County		Nonattainment		Subpart 1.
Rest of State				
Adams County		Unclassifiable/Attainment.		
Bartholomew County		Unclassifiable/Attainment.		
Benton County		Unclassifiable/Attainment.		
Blackford County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Cass County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Daviess County		Unclassifiable/Attainment.		
De Kalb County		Unclassifiable/Attainment.		
Dearborn County (part) remainder		Unclassifiable/Attainment.		
Decatur County		Unclassifiable/Attainment.		
Dubois County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Fountain County		Unclassifiable/Attainment.		
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gibson County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Howard County		Unclassifiable/Attainment.		
Huntington County		Unclassifiable/Attainment.		

INDIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Jasper County		Unclassifiable/Attainment.		
Jay County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jennings County		Unclassifiable/Attainment.		
Knox County		Unclassifiable/Attainment.		
Kosciusko County		Unclassifiable/Attainment.		
LaGrange County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Martin County		Unclassifiable/Attainment.		
Miami County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Newton County		Unclassifiable/Attainment.		
Noble County		Unclassifiable/Attainment.		
Ohio County		Unclassifiable/Attainment.		
Orange County		Unclassifiable/Attainment.		
Owen County		Unclassifiable/Attainment.		
Parke County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Posey County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Randolph County		Unclassifiable/Attainment.		
Ripley County		Unclassifiable/Attainment.		
Rush County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Spencer County		Unclassifiable/Attainment.		
Starke County		Unclassifiable/Attainment.		
Steuben County		Unclassifiable/Attainment.		
Sullivan County		Unclassifiable/Attainment.		
Switzerland County		Unclassifiable/Attainment.		
Tippecanoe County		Unclassifiable/Attainment.		
Tipton County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Vermillion County		Unclassifiable/Attainment.		
Wabash County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Warrick County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
Wells County		Unclassifiable/Attainment.		
White County		Unclassifiable/Attainment.		
Whitley County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 17. In § 81.316, the table entitled ''Iowa—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.316 Iowa.

* * * * *

IOWA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Adair County				
Adams County				
Allamakee County				
Appanoose County				
Audubon County				
Benton County				
Black Hawk County				
Boone County				
Bremer County				

IOWA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Buchanan County				
Buena Vista County				
Butler County				
Calhoun County				
Carroll County				
Cass County				
Cedar County				
Cerro Gordo County				
Cherokee County				
Chickasaw County				
Clarke County				
Clay County				
Clayton County				
Clinton County				
Crawford County				
Dallas County				
Davis County				
Decatur County				
Delaware County				
Des Moines County				
Dickinson County				
Dubuque County				
Emmet County				
Fayette County				
Floyd County				
Franklin County				
Fremont County				
Greene County				
Grundy County				
Guthrie County				
Hamilton County				
Hancock County				
Hardin County				
Harrison County				
Henry County				
Howard County				
Humboldt County				
Ida County				
Iowa County				
Jackson County				
Jasper County				
Jefferson County				
Johnson County				
Jones County				
Keokuk County				
Kossuth County				
Lee County				
Linn County				
Louisa County				
Lucas County				
Lyon County				
Madison County				
Mahaska County				
Marion County				
Marshall County				
Mills County				
Mitchell County				
Monona County				
Monroe County				
Montgomery County				
Muscatine County				
O'Brien County				
Osceola County				
Page County				
Palo Alto County				
Plymouth County				
Pocahontas County				
Polk County				
Pottawattamie County				
Poweshiek County				

IOWA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Ringgold County				
Sac County				
Scott County				
Shelby County				
Sioux County				
Story County				
Tama County				
Taylor County				
Union County				
Van Buren County				
Wapello County				
Warren County				
Washington County				
Wayne County				
Webster County				
Winnebago County				
Winneshiek County				
Woodbury County				
Worth County				
Wright County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 18. In § 81.317, the table entitled ''Kansas—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.317 Kansas.

* * * * *

KANSAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Kansas City, KS–MO:				
Johnson County		Unclassifiable [b].		
Linn County		Unclassifiable [b].		
Miami County		Unclassifiable [b].		
Wyandotte County		Unclassifiable [b].		
Rest of State:				
Allen County		Unclassifiable/Attainment.		
Anderson County		Unclassifiable/Attainment.		
Atchison County		Unclassifiable/Attainment.		
Barber County		Unclassifiable/Attainment.		
Barton County		Unclassifiable/Attainment.		
Bourbon County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Butler County		Unclassifiable/Attainment.		
Chase County		Unclassifiable/Attainment.		
Chautauqua County		Unclassifiable/Attainment.		
Cherokee County		Unclassifiable/Attainment.		
Cheyenne County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Cloud County		Unclassifiable/Attainment.		
Coffey County		Unclassifiable/Attainment.		
Comanche County		Unclassifiable/Attainment.		
Cowley County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Decatur County		Unclassifiable/Attainment.		
Dickinson County		Unclassifiable/Attainment.		
Doniphan County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Edwards County		Unclassifiable/Attainment.		
Elk County		Unclassifiable/Attainment.		
Ellis County		Unclassifiable/Attainment.		
Ellsworth County		Unclassifiable/Attainment.		
Finney County		Unclassifiable/Attainment.		
Ford County		Unclassifiable/Attainment.		

KANSAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Franklin County		Unclassifiable/Attainment.		
Geary County		Unclassifiable/Attainment.		
Gove County		Unclassifiable/Attainment.		
Graham County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Gray County		Unclassifiable/Attainment.		
Greeley County		Unclassifiable/Attainment.		
Greenwood County		Unclassifiable/Attainment.		
Hamilton County		Unclassifiable/Attainment.		
Harper County		Unclassifiable/Attainment.		
Harvey County		Unclassifiable/Attainment.		
Haskell County		Unclassifiable/Attainment.		
Hodgeman County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Jewell County		Unclassifiable/Attainment.		
Kearny County		Unclassifiable/Attainment.		
Kingman County		Unclassifiable/Attainment.		
Kiowa County		Unclassifiable/Attainment.		
Labette County		Unclassifiable/Attainment.		
Lane County		Unclassifiable/Attainment.		
Leavenworth County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Lyon County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
McPherson County		Unclassifiable/Attainment.		
Meade County		Unclassifiable/Attainment.		
Mitchell County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morris County		Unclassifiable/Attainment.		
Morton County		Unclassifiable/Attainment.		
Nemaha County		Unclassifiable/Attainment.		
Neosho County		Unclassifiable/Attainment.		
Ness County		Unclassifiable/Attainment.		
Norton County		Unclassifiable/Attainment.		
Osage County		Unclassifiable/Attainment.		
Osborne County		Unclassifiable/Attainment.		
Ottawa County		Unclassifiable/Attainment.		
Pawnee County		Unclassifiable/Attainment.		
Phillips County		Unclassifiable/Attainment.		
Pottawatomie County		Unclassifiable/Attainment.		
Pratt County		Unclassifiable/Attainment.		
Rawlins County		Unclassifiable/Attainment.		
Reno County		Unclassifiable/Attainment.		
Republic County		Unclassifiable/Attainment.		
Rice County		Unclassifiable/Attainment.		
Riley County		Unclassifiable/Attainment.		
Rooks County		Unclassifiable/Attainment.		
Rush County		Unclassifiable/Attainment.		
Russell County		Unclassifiable/Attainment.		
Saline County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Sedgwick County		Unclassifiable/Attainment.		
Seward County		Unclassifiable/Attainment.		
Shawnee County		Unclassifiable/Attainment.		
Sheridan County		Unclassifiable/Attainment.		
Sherman County		Unclassifiable/Attainment.		
Smith County		Unclassifiable/Attainment.		
Stafford County		Unclassifiable/Attainment.		
Stanton County		Unclassifiable/Attainment.		
Stevens County		Unclassifiable/Attainment.		
Sumner County		Unclassifiable/Attainment.		
Thomas County		Unclassifiable/Attainment.		
Trego County		Unclassifiable/Attainment.		
Wabaunsee County		Unclassifiable/Attainment.		
Wallace County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wichita County		Unclassifiable/Attainment.		

KANSAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Wilson County		Unclassifiable/Attainment.		
Woodson County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This area is given an ''Unclassifiable'' designation. EPA will review all available information and make an attainment or nonattainment decision after reviewing the 2004 data.
[1] This date is June 15, 2004, unless otherwise noted.

■ 19. In § 81.318, the table entitled ''Kentucky—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.318 Kentucky.

* * * * *

KENTUCKY—OZONE (8-HOUR STANDARD)

Designation	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Cincinnati-Hamilton, OH–KY–IN:				
Boone County		Nonattainment		Subpart 1.
Campbell County		Nonattainment		Subpart 1.
Kenton County		Nonattainment		Subpart 1.
Clarkesville-Hopkinsville, TN–KY:				
Christian County		Nonattainment		Subpart 1.
Louisville, KY–IN:				
Bullitt County		Nonattainment		Subpart 1.
Jefferson County		Nonattainment		Subpart 1.
Oldham County		Nonattainment		Subpart 1.
Huntington-Ashland, WV–KY:				
Boyd County		Nonattainment		Subpart 1.
Rest of State				
Adair County		Unclassifiable/Attainment.		
Allen County		Unclassifiable/Attainment.		
Anderson County		Unclassifiable/Attainment.		
Ballard County		Unclassifiable/Attainment.		
Barren County		Unclassifiable/Attainment.		
Bath County		Unclassifiable/Attainment.		
Bell County		Unclassifiable/Attainment.		
Bourbon County		Unclassifiable/Attainment.		
Boyle County		Unclassifiable/Attainment.		
Bracken County		Unclassifiable/Attainment.		
Breathitt County		Unclassifiable/Attainment.		
Breckinridge County		Unclassifiable/Attainment.		
Butler County		Unclassifiable/Attainment.		
Caldwell County		Unclassifiable/Attainment.		
Calloway County		Unclassifiable/Attainment.		
Carlisle County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Carter County		Unclassifiable/Attainment.		
Casey County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Crittenden County		Unclassifiable/Attainment.		
Cumberland County		Unclassifiable/Attainment.		
Daviess County		Unclassifiable/Attainment.		
Edmonson County		Unclassifiable/Attainment.		
Elliott County		Unclassifiable/Attainment.		
Estill County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Fleming County		Unclassifiable/Attainment.		
Floyd County		Unclassifiable/Attainment.		
Franklin County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Garrard County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Graves County		Unclassifiable/Attainment.		
Grayson County		Unclassifiable/Attainment.		
Green County		Unclassifiable/Attainment.		

KENTUCKY—OZONE (8-HOUR STANDARD)—Continued

Designation	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Greenup County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Harlan County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Hart County		Unclassifiable/Attainment.		
Henderson County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Hickman County		Unclassifiable/Attainment.		
Hopkins County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jessamine County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Knott County		Unclassifiable/Attainment.		
Knox County		Unclassifiable/Attainment.		
Larue County		Unclassifiable/Attainment.		
Laurel County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lee County.		Unclassifiable/Attainment.		
Leslie County		Unclassifiable/Attainment.		
Letcher County		Unclassifiable/Attainment.		
Lewis County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Livingston County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Lyon County		Unclassifiable/Attainment.		
Madison County		Unclassifiable/Attainment.		
Magoffin County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Martin County		Unclassifiable/Attainment.		
Mason County		Unclassifiable/Attainment.		
McCracken County		Unclassifiable/Attainment.		
McCreary County		Unclassifiable/Attainment.		
McLean County		Unclassifiable/Attainment.		
Meade County		Unclassifiable/Attainment.		
Menifee County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Metcalfe County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Montgomery County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Muhlenberg County		Unclassifiable/Attainment.		
Nelson County		Unclassifiable/Attainment.		
Nicholas County		Unclassifiable/Attainment.		
Ohio County		Unclassifiable/Attainment.		
Owen County		Unclassifiable/Attainment.		
Owsley County		Unclassifiable/Attainment.		
Pendleton County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Powell County		Unclassifiable/Attainment.		
Pulaski County		Unclassifiable/Attainment.		
Robertson County		Unclassifiable/Attainment.		
Rockcastle County		Unclassifiable/Attainment.		
Rowan County		Unclassifiable/Attainment.		
Russell County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Simpson County		Unclassifiable/Attainment.		
Spencer County		Unclassifiable/Attainment.		
Taylor County		Unclassifiable/Attainment.		
Todd County		Unclassifiable/Attainment.		
Trigg County		Unclassifiable/Attainment.		
Trimble County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
Webster County		Unclassifiable/Attainment.		

KENTUCKY—OZONE (8-HOUR STANDARD)—Continued

Designation	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Whitley County	.....	Unclassifiable/Attainment.		
Wolfe County	.....	Unclassifiable/Attainment.		
Woodford County	.....	Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 20. In § 81.319, the table entitled ''Louisiana—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge, LA:				
Ascension Parish	.....	Nonattainment	.....	Subpart 2/Marginal.
East Baton Rouge Parish	.....	Nonattainment	.....	Subpart 2/Marginal.
Iberville Parish	.....	Nonattainment	.....	Subpart 2/Marginal.
Livingston Parish	.....	Nonattainment	.....	Subpart 2/Marginal.
West Baton Rouge Parish	.....	Nonattainment	.....	Subpart 2/Marginal.
Beauregard Parish Area, LA:				
Beauregard Parish	.....	Unclassifiable/Attainment.		
Grant Parish Area:				
Grant Parish	.....	Unclassifiable/Attainment.		
Lafayette Area:				
Lafayette Parish	.....	Unclassifiable/Attainment.		
Lafourche Parish Area:				
Lafourche Parish	.....	Unclassifiable/Attainment.		
Lake Charles Area:				
Calcasieu Parish	.....	Unclassifiable/Attainment.		
New Orleans Area:				
Jefferson Parish	.....	Unclassifiable/Attainment.		
Orleans Parish	.....	Unclassifiable/Attainment.		
St. Bernard Parish	.....	Unclassifiable/Attainment.		
St. Charles Parish	.....	Unclassifiable/Attainment.		
Pointe Coupee Area:				
Pointe Coupee Parish	.....	Unclassifiable/Attainment.		
St. James Parish Area:				
St. James Parish	.....	Unclassifiable/Attainment.		
St. Mary Parish Area:				
St. Mary Parish	.....	Unclassifiable/Attainment.		
AQCR 019 Monroe-El Dorado Interstate	.....	Unclassifiable/Attainment.		
Caldwell Parish				
Catahoula Parish				
Concordia Parish				
East Carroll Parish				
Franklin Parish				
La Salle Parish				
Madison Parish				
Morehouse Parish				
Ouachita Parish				
Richland Parish				
Tensas Parish				
Union Parish				
West Carroll Parish				
AQCR 022 Shreveport-Texarkana-Tyler Interstate	.....	Unclassifiable/Attainment.		
Bienville Parish				
Bossier Parish				
Caddo Parish				
Claiborne Parish				
De Soto Parish				
Jackson Parish				
Lincoln Parish				
Natchitoches Parish				
Red River Parish				
Sabine Parish				
Webster Parish				

LOUISIANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Winn Parish				
AQCR 106 S. Louisiana-S.E. Texas Interstate:				
St. John the Baptist Parish	.....	Unclassifiable/Attainment.		
AQCR 106 S. Louisiana-S.E. Texas Interstate	.....	Unclassifiable/Attainment.		
Acadia Parish				
Allen Parish				
Assumption Parish				
Avoyelles Parish				
Cameron Parish				
East Feliciana Parish				
Evangeline Parish				
Iberia Parish				
Jefferson Davis Parish				
Plaquemines Parish				
Rapides Parish				
St. Helena Parish				
St. Landry Parish				
St. Martin Parish				
St. Tammany Parish				
Tangipahoa Parish				
Terrebonne Parish				
Vermilion Parish				
Vernon Parish				
Washington Parish				
West Feliciana Parish				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 21. In § 81.320, the table entitled ''Maine—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.320 Maine.

* * * * *

MAINE—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Hancock, Knox, Lincoln and Waldo Cos., ME:				
Hancock County (part) ..... (includes only the following cities and towns): Bar Harbor, Blue Hill, Brooklin, Brooksville, Cranberry Isle, Deer Isle, Frenchboro, Gouldsboro, Hancock, Lamoine, Mount Desert, Sedgwick, Sorrento, Southwest Harbor, Stonington, Sullivan, Surry, Swans Island, Tremont, Trenton, and Winter Harbor	.....	Nonattainment	.....	Subpart 1.
Knox County (part) ..... (includes only the following cities and towns): Camden, Criehaven, Cushing, Friendship, Isle au Haut, Matinicus Isle, Muscle Ridge Shoals, North Haven, Owls Head, Rockland, Rockport, St. George, South Thomaston, Thomaston, Vinalhaven, and Warren	.....	Nonattainment	.....	Subpart 1.
Lincoln County (part) ..... (includes only the following cities and towns): Alna, Boothbay, Boothbay Harbor, Breman, Bristol, Damariscotta, Dresden, Edgecomb, Monhegan, Newcastle, Nobleboro, South Bristol, Southport, Waldoboro, Westport, and Wiscasset	.....	Nonattainment	.....	Subpart 1.
Waldo County (part) ..... (includes only the following town): Islesboro	.....	Nonattainment	.....	Subpart 1.
Portland, ME:				
Androscoggin County (part) ..... (includes only the following town): Durham	.....	Nonattainment	.....	Subpart 2/Marginal.
Cumberland County (part)	.....	Nonattainment	.....	Subpart 2/Marginal.

MAINE—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
(includes only the following cities and towns): Brunswick, Cape Elizabeth, Casco, Cumberland, Falmouth, Freeport, Frye Island, Gorham, Gray, Harpswell, Long Island, New Gloucester, North Yarmouth, Portland, Pownal, Raymond, Scarborough, South Portland, Standish, Westbrook, Windham, and Yarmouth				
Sagadahoc County (includes all cities & towns)	.....	Nonattainment	.....	Subpart 2/Marginal.
York County (part) (includes only the following cities and towns): Alfred, Arundel, Berwick, Biddeford, Buxton, Dayton, Elliot, Hollis, Kennebunk, Kennebunkport, Kittery, Limington, Lyman, North Berwick, Ogunquit, Old Orchard Beach, Saco, Sanford, South Berwick, Wells, and York	.....	Nonattainment	.....	Subpart 2/Marginal.
Rest of State	.....	Unclassifiable Attainment.		
Androscoggin County (part) remainder				
Aroostook County				
Cumberland County (part) remainder				
Franklin County				
Hancock County (part) remainder				
Kennebec County				
Knox County (part) remainder				
Lincoln County (part) remainder				
Oxford County				
Penobscot County				
Piscataquis County				
Somerset County				
Waldo County (part) remainder				
Washington County				
York County (part) remainder				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 22. In § 81.321, the table entitled ''Maryland—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.321 Maryland.

* * * * *

MARYLAND—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Baltimore, MD:				
Anne Arundel County	.....	Nonattainment	.....	Subpart 2/Moderate.
City of Baltimore	.....	Nonattainment	.....	Subpart 2/Moderate.
Baltimore County	.....	Nonattainment	.....	Subpart 2/Moderate.
Carroll County	.....	Nonattainment	.....	Subpart 2/Moderate.
Harford County	.....	Nonattainment	.....	Subpart 2/Moderate.
Howard County	.....	Nonattainment	.....	Subpart 2/Moderate.
Kent and Queen Anne's Cos., MD:				
Kent County	.....	Nonattainment	.....	Subpart 2/Moderate.
Queen Anne's County	.....	Nonattainment	.....	Subpart 2/Moderate.
Washington Co. (Hagerstown), MD:				
Washington County	(2)	Nonattainment	(2)	Subpart 1.
Philadelphia-Wilmin-Atlantic Ci, PA–NJ–MD–DE:				
Cecil County	.....	Nonattainment	.....	Subpart 2/Moderate.
Washington, DC–MD–VA:				
Calvert County	.....	Nonattainment	.....	Subpart 2/Moderate.
Charles County	.....	Nonattainment	.....	Subpart 2/Moderate.
Frederick County	.....	Nonattainment	.....	Subpart 2/Moderate.
Montgomery County	.....	Nonattainment	.....	Subpart 2/Moderate.
Prince George's County	.....	Nonattainment	.....	Subpart 2/Moderate.
AQCR 113 Cumberland-Keyser Interstate	.....	Unclassifiable/Attainment.		
Allegany County.				
Garrett County.				

MARYLAND—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 114 Eastern Shore Interstate (remainder of)	.....	Unclassifiable/Attainment.		
Caroline County.				
Dorchester County.				
Somerset County.				
Talbot County.				
Wicomico County.				
Worcester County.				
AQCR 116 Southern Maryland Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
St. Mary's County.				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 23. In § 81.322, the table entitled ''Massachusetts—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.322 Massachusetts.

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MASSACHUSETTS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Boston-Lawrence-Worcester (E. Mass), MA:				
Barnstable County	.....	Nonattainment	.....	Subpart 2/Moderate.
Bristol County	.....	Nonattainment	.....	Subpart 2/Moderate.
Dukes County	.....	Nonattainment	.....	Subpart 2/Moderate.
Essex County	.....	Nonattainment	.....	Subpart 2/Moderate.
Middlesex County	.....	Nonattainment	.....	Subpart 2/Moderate.
Nantucket County	.....	Nonattainment	.....	Subpart 2/Moderate.
Norfolk County	.....	Nonattainment	.....	Subpart 2/Moderate.
Plymouth County	.....	Nonattainment	.....	Subpart 2/Moderate.
Suffolk County	.....	Nonattainment	.....	Subpart 2/Moderate.
Worcester County	.....	Nonattainment	.....	Subpart 2/Moderate.
Springfield (W. Mass), MA:				
Berkshire County	.....	Nonattainment	.....	Subpart 2/Moderate.
Franklin County	.....	Nonattainment	.....	Subpart 2/Moderate.
Hampden County	.....	Nonattainment	.....	Subpart 2/Moderate.
Hampshire County	.....	Nonattainment	.....	Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 24. In § 81.323, the table entitled ''Michigan—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.323 Michigan.

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MICHIGAN—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Allegan Co., MI:				
Allegan County	.....	Nonattainment	.....	Subpart 1.
Barry County Area:				
Barry County	.....	Unclassifiable/Attainment.		
Benton Harbor, MI:				
Berrien County	.....	Nonattainment	.....	Subpart 1.
Benzie Co., MI:				
Benzie County	.....	Nonattainment	.....	Subpart 1.
Branch County Area:				
Branch County	.....	Unclassifiable/Attainment.		
Cass County, MI:				
Cass County	.....	Nonattainment	.....	Subpart 2/Moderate.
Detroit-Ann Arbor, MI:				
Lenawee County	.....	Nonattainment	.....	Subpart 2/Moderate.

MICHIGAN—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Livingston County		Nonattainment		Subpart 2/Moderate.
Macomb County		Nonattainment		Subpart 2/Moderate.
Monroe County		Nonattainment		Subpart 2/Moderate.
Oakland County		Nonattainment		Subpart 2/Moderate.
St Clair County		Nonattainment		Subpart 2/Moderate.
Washtenaw County		Nonattainment		Subpart 2/Moderate.
Wayne County		Nonattainment		Subpart 2/Moderate.
Flint, MI:				
Genesee County		Nonattainment		Subpart 1.
Lapeer County		Nonattainment		Subpart 1.
Grand Rapids, MI:				
Kent County		Nonattainment		Subpart 1.
Ottawa County		Nonattainment		Subpart 1.
Gratiot County Area:				
Gratiot County		Unclassifiable/Attainment.		
Hillsdale County Area:				
Hillsdale County		Unclassifiable/Attainment.		
Huron Co, MI:				
Huron County		Nonattainment		Subpart 1.
Ionia County Area:				
Ionia County		Unclassifiable/Attainment.		
Jackson Area:				
Jackson County		Unclassifiable/Attainment.		
Kalamazoo-Battle Creek, MI:				
Calhoun County		Nonattainment		Subpart 1.
Kalamazoo County		Nonattainment		Subpart 1.
Van Buren County		Nonattainment		Subpart 1.
Lansing-East Lansing, MI:				
Clinton County		Nonattainment		Subpart 1.
Eaton County		Nonattainment		Subpart 1.
Ingham County		Nonattainment		Subpart 1.
Mason Co, MI:				
Mason County		Nonattainment		Subpart 1.
Montcalm Area:				
Montcalm County		Unclassifiable/Attainment.		
Muskegon, MI:				
Muskegon County		Nonattainment		Subpart 2/Moderate.
Saginaw-Bay City-Midland Area:				
Bay County		Unclassifiable/Attainment.		
Midland County		Unclassifiable/Attainment.		
Saginaw County		Unclassifiable/Attainment.		
Sanilac County Area:				
Sanilac County		Unclassifiable/Attainment.		
Shiawassee County Area:				
Shiawassee County		Unclassifiable/Attainment.		
St Joseph County Area:				
St Joseph County		Unclassifiable/Attainment.		
Tuscola County Area:				
Tuscola County		Unclassifiable/Attainment.		
AQCR 122 Central Michigan Intrastate (remainder of)		Unclassifiable/Attainment.		
Arenac County				
Clare County				
Gladwin County				
Iosco County				
Isabella County				
Lake County				
Mecosta County				
Newaygo County				
Oceana County				
Ogemaw County				
Osceola County				
Roscommon County				
AQCR 126 Upper Michigan Intrastate (part)		Unclassifiable/Attainment.		
Marquette County				
AQCR 126 Upper Michigan Intrastate (remainder of)		Unclassifiable/Attainment.		
Alcona County				
Alger County				
Alpena County				
Antrim County				
Baraga County				

MICHIGAN—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Charlevoix County				
Cheboygan County				
Chippewa County				
Crawford County				
Delta County				
Dickinson County				
Emmet County				
Gogebic County				
Grand Traverse County				
Houghton County				
Iron County				
Kalkaska County				
Keweenaw County				
Leelanau County				
Luce County				
Mackinac County				
Manistee County				
Menominee County				
Missaukee County				
Montmorency County				
Ontonagon County				
Oscoda County				
Otsego County				
Presque Isle County				
Schoolcraft County				
Wexford County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 25. In § 81.324, the table entitled ''Minnesota—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.324 Minnesota.

* * * * *

MINNESOTA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Minneapolis-Saint Paul Area:				
Anoka County		Unclassifiable/Attainment.		
Carver County		Unclassifiable/Attainment.		
Dakota County		Unclassifiable/Attainment.		
Hennepin County		Unclassifiable/Attainment.		
Ramsey County		Unclassifiable/Attainment.		
Scott County		Unclassifiable/Attainment.		
Washington County		Unclassifiable/Attainment.		
Rest of State		Unclassifiable/Attainment.		
Aitkin County		Unclassifiable/Attainment.		
Becker County		Unclassifiable/Attainment.		
Beltrami County		Unclassifiable/Attainment.		
Benton County		Unclassifiable/Attainment.		
Big Stone County		Unclassifiable/Attainment.		
Blue Earth County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Carlton County		Unclassifiable/Attainment.		
Cass County		Unclassifiable/Attainment.		
Chippewa County		Unclassifiable/Attainment.		
Chisago County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Clearwater County		Unclassifiable/Attainment.		
Cook County		Unclassifiable/Attainment.		
Cottonwood County		Unclassifiable/Attainment.		
Crow Wing County		Unclassifiable/Attainment.		
Dodge County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Faribault County		Unclassifiable/Attainment.		
Fillmore County		Unclassifiable/Attainment.		

MINNESOTA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Freeborn County		Unclassifiable/Attainment.		
Goodhue County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Houston County		Unclassifiable/Attainment.		
Hubbard County		Unclassifiable/Attainment.		
Isanti County		Unclassifiable/Attainment.		
Itasca County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Kanabec County		Unclassifiable/Attainment.		
Kandiyohi County		Unclassifiable/Attainment.		
Kittson County		Unclassifiable/Attainment.		
Koochiching County		Unclassifiable/Attainment.		
Lac qui Parle County		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
Lake of the Woods County		Unclassifiable/Attainment.		
Le Sueur County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Lyon County		Unclassifiable/Attainment.		
Mahnomen County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
Martin County		Unclassifiable/Attainment.		
McLeod County		Unclassifiable/Attainment.		
Meeker County		Unclassifiable/Attainment.		
Mille Lacs County		Unclassifiable/Attainment.		
Morrison County		Unclassifiable/Attainment.		
Mower County		Unclassifiable/Attainment.		
Murray County		Unclassifiable/Attainment.		
Nicollet County		Unclassifiable/Attainment.		
Nobles County		Unclassifiable/Attainment.		
Norman County		Unclassifiable/Attainment.		
Olmsted County		Unclassifiable/Attainment.		
Otter Tail County		Unclassifiable/Attainment.		
Pennington County		Unclassifiable/Attainment.		
Pine County		Unclassifiable/Attainment.		
Pipestone County		Unclassifiable/Attainment.		
Polk County		Unclassifiable/Attainment.		
Pope County		Unclassifiable/Attainment.		
Red Lake County		Unclassifiable/Attainment.		
Redwood County		Unclassifiable/Attainment.		
Renville County		Unclassifiable/Attainment.		
Rice County		Unclassifiable/Attainment.		
Rock County		Unclassifiable/Attainment.		
Roseau County		Unclassifiable/Attainment.		
St. Louis County		Unclassifiable/Attainment.		
Sherburne County		Unclassifiable/Attainment.		
Sibley County		Unclassifiable/Attainment.		
Stearns County		Unclassifiable/Attainment.		
Steele County		Unclassifiable/Attainment.		
Stevens County		Unclassifiable/Attainment.		
Swift County		Unclassifiable/Attainment.		
Todd County		Unclassifiable/Attainment.		
Traverse County		Unclassifiable/Attainment.		
Wabasha County		Unclassifiable/Attainment.		
Wadena County		Unclassifiable/Attainment.		
Waseca County		Unclassifiable/Attainment.		
Watonwan County		Unclassifiable/Attainment.		
Wilkin County		Unclassifiable/Attainment.		
Winona County		Unclassifiable/Attainment.		
Wright County		Unclassifiable/Attainment.		
Yellow Medicine County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 26. In § 81.325, the table entitled ''Mississippi—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.325 Mississippi.

* * * * *

MISSISSIPPI—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide	.....	Unclassifiable/Attainment.		
Adams County				
Alcorn County				
Amite County				
Attala County				
Benton County				
Bolivar County				
Calhoun County				
Carroll County				
Chickasaw County				
Choctaw County				
Claiborne County				
Clarke County				
Clay County				
Coahoma County				
Copiah County				
Covington County				
DeSoto County				
Forrest County				
Franklin County				
George County				
Greene County				
Grenada County				
Hancock County				
Harrison County				
Hinds County				
Holmes County				
Humphreys County				
Issaquena County				
Itawamba County				
Jackson County				
Jasper County				
Jefferson County				
Jefferson Davis County				
Jones County				
Kemper County				
Lafayette County				
Lamar County				
Lauderdale County				
Lawrence County				
Leake County				
Lee County				
Leflore County				
Lincoln County				
Lowndes County				
Madison County				
Marion County				
Marshall County				
Monroe County				
Montgomery County				
Neshoba County				
Newton County				
Noxubee County				
Oktibbeha County				
Panola County				
Pearl River County				
Perry County				
Pike County				
Pontotoc County				
Prentiss County				
Quitman County				
Rankin County				
Scott County				
Sharkey County				
Simpson County				
Smith County				
Stone County				
Sunflower County				
Tallahatchie County				
Tate County				

MISSISSIPPI—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Tippah County				
Tishomingo County				
Tunica County				
Union County				
Walthall County				
Warren County				
Washington County				
Wayne County				
Webster County				
Wilkinson County				
Winston County				
Yalobusha County				
Yazoo County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 27. In § 81.326, the table entitled ''Missouri—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.326 Missouri.

* * * * *

MISSOURI—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Kansas City, MO–KS:				
Cass County		Unclassifiable [b].		
Clay County		Unclassifiable [b].		
Jackson County		Unclassifiable [b].		
Platte County		Unclassifiable [b].		
St. Louis, MO–IL:				
Franklin County	.....	Nonattainment	.....	Subpart 2/Moderate.
Jefferson County	.....	Nonattainment	.....	Subpart 2/Moderate.
St. Charles County	.....	Nonattainment	.....	Subpart 2/Moderate.
St. Louis City	.....	Nonattainment	.....	Subpart 2/Moderate.
St. Louis County.	.....	Nonattainment	.....	Subpart 2/Moderate.
AQCR 094 Metro Kansas City Interstate		Unclassifiable/Attainment.		
Buchanan County				
Ray County				
AQCR 137 N. Missouri Intrastate (part)				
Pike County		Unclassifiable/Attainment.		
Ralls County		Unclassifiable/Attainment.		
AQCR 137 N. Missouri Intrastate (remainder of)		Unclassifiable/Attainment.		
Adair County				
Andrew County				
Atchison County				
Audrain County				
Boone County				
Caldwell County				
Callaway County				
Carroll County				
Chariton County				
Clark County				
Clinton County				
Cole County				
Cooper County				
Daviess County				
DeKalb County				
Gentry County				
Grundy County				
Harrison County				
Holt County				
Howard County				
Knox County				
Lewis County				
Lincoln County				
Linn County				
Livingston County				

MISSOURI—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Macon County				
Marion County				
Mercer County				
Moniteau County				
Monroe County				
Montgomery County				
Nodaway County				
Osage County				
Putnam County				
Randolph County				
Saline County				
Schuyler County				
Scotland County				
Shelby County				
Sullivan County				
Warren County				
Worth County				
Rest of State:		Unclassifiable/Attainment		
Barry County				
Barton County				
Bates County				
Benton County				
Bollinger County				
Butler County				
Camden County				
Cape Girardeau County				
Carter County				
Cedar County				
Christian County				
Crawford County				
Dade County				
Dallas County				
Dent County				
Douglas County				
Dunklin County				
Gasconade County				
Greene County				
Henry County				
Hickory County				
Howell County				
Iron County				
Jasper County				
Johnson County				
Laclede County				
Lafayette County				
Lawrence County				
Madison County				
Maries County				
McDonald County				
Miller County				
Mississippi County				
Morgan County				
New Madrid County				
Newton County				
Oregon County				
Ozark County				
Pemiscot County				
Perry County				
Pettis County				
Phelps County				
Polk County				
Pulaski County				
Reynolds County				
Ripley County				
St. Clair County				
St. Francois County				
Ste. Genevieve County				
Scott County				
Shannon County				
Stoddard County				

MISSOURI—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Stone County				
Taney County				
Texas County				
Vernon County				
Washington County				
Wayne County				
Webster County				
Wright County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This area is given an ''Unclassifiable'' designation. EPA will review all available information and make an attainment or nonattainment decision after reviewing the 2004 data.
[1] This date is June 15, 2004, unless otherwise noted.

■ 28. In § 81.327, the table entitled ''Montana—Ozone(8-Hour Standard)'' is added to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:				
Beaverhead County		Unclassifiable/Attainment.		
Big Horn County		Unclassifiable/Attainment.		
Blaine County		Unclassifiable/Attainment.		
Broadwater County		Unclassifiable/Attainment.		
Carbon County		Unclassifiable/Attainment.		
Carter County		Unclassifiable/Attainment.		
Cascade County		Unclassifiable/Attainment.		
Chouteau County		Unclassifiable/Attainment.		
Custer County		Unclassifiable/Attainment.		
Daniels County		Unclassifiable/Attainment.		
Dawson County		Unclassifiable/Attainment.		
Deer Lodge County		Unclassifiable/Attainment.		
Fallon County		Unclassifiable/Attainment.		
Fergus County		Unclassifiable/Attainment.		
Flathead County		Unclassifiable/Attainment.		
Gallatin County		Unclassifiable/Attainment.		
Garfield County		Unclassifiable/Attainment.		
Glacier County		Unclassifiable/Attainment.		
Golden Valley County		Unclassifiable/Attainment.		
Granite County.		Unclassifiable/Attainment.		
Hill County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Judith Basin County		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
Lewis and Clark County		Unclassifiable/Attainment.		
Liberty County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Madison County		Unclassifiable/Attainment.		
McCone County		Unclassifiable/Attainment.		
Meagher County		Unclassifiable/Attainment.		
Mineral County		Unclassifiable/Attainment.		
Missoula County		Unclassifiable/Attainment.		
Musselshell County		Unclassifiable/Attainment.		
Park County		Unclassifiable/Attainment.		
Petroleum County		Unclassifiable/Attainment.		
Phillips County		Unclassifiable/Attainment.		
Pondera County		Unclassifiable/Attainment.		
Powder River County		Unclassifiable/Attainment.		
Powell County		Unclassifiable/Attainment.		
Prairie County		Unclassifiable/Attainment.		
Ravalli County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Roosevelt County		Unclassifiable/Attainment.		
Rosebud County		Unclassifiable/Attainment.		
Sanders County		Unclassifiable/Attainment.		

MONTANA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Sheridan County		Unclassifiable/Attainment.		
Silver Bow County		Unclassifiable/Attainment.		
Stillwater County		Unclassifiable/Attainment.		
Sweet Grass County		Unclassifiable/Attainment.		
Teton County		Unclassifiable/Attainment.		
Toole County		Unclassifiable/Attainment.		
Treasure County		Unclassifiable/Attainment.		
Valley County		Unclassifiable/Attainment.		
Wheatland County		Unclassifiable/Attainment.		
Wibaux County		Unclassifiable/Attainment.		
Yellowstone County		Unclassifiable/Attainment.		
Yellowstone Natl Park		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 29. In § 81.328, the table entitled ''Nebraska—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.328 Nebraska.

* * * * *

NEBRASKA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:		Unclassifiable/Attainment.		
Adams County				
Antelope County				
Arthur County				
Banner County				
Blaine County				
Boone County				
Box Butte County				
Boyd County				
Brown County				
Buffalo County				
Burt County				
Butler County				
Cass County				
Cedar County				
Chase County				
Cherry County				
Cheyenne County				
Clay County				
Colfax County				
Cuming County				
Custer County				
Dakota County				
Dawes County				
Dawson County				
Deuel County				
Dixon County				
Dodge County				
Douglas County				
Dundy County				
Fillmore County				
Franklin County				
Frontier County				
Furnas County				
Gage County				
Garden County				
Garfield County				
Gosper County				
Grant County				
Greeley County				
Hall County				
Hamilton County				
Harlan County				
Hayes County				

NEBRASKA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Hitchcock County				
Holt County				
Hooker County				
Howard County				
Jefferson County				
Johnson County				
Kearney County				
Keith County				
Keya Paha County				
Kimball County				
Knox County				
Lancaster County				
Lincoln County				
Logan County				
Loup County				
Madison County				
McPherson County				
Merrick County				
Morrill County				
Nance County				
Nemaha County				
Nuckolls County				
Otoe County				
Pawnee County				
Perkins County				
Phelps County				
Pierce County				
Platte County				
Polk County				
Red Willow County				
Richardson County				
Rock County				
Saline County				
Sarpy County				
Saunders County				
Scotts Bluff County				
Seward County				
Sheridan County				
Sherman County				
Sioux County				
Stanton County				
Thayer County				
Thomas County				
Thurston County				
Valley County				
Washington County				
Wayne County				
Webster County				
Wheeler County				
York County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 30. In § 81.329, the table entitled ''Nevada—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.329 Nevada.

* * * * *

NEVADA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Las Vegas, NV:				
Clark County	.....	Nonattainment	.....	Subpart 1
Rest of State:	.....	Unclassifiable/Attainment.		
Carson City				
Churchill County				

NEVADA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Douglas County Elko County Esmeralda County Eureka County Humboldt County Lander County Lincoln County Lyon County Mineral County Nye County Pershing County Storey County Washoe County (Reno Area) White Pine County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 31. In § 81.330, the table entitled ''New Hampshire—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.330 New Hampshire.

* * * * *

NEW HAMPSHIRE—OZONE (8-HOUR STANDARD)

Designated area	Designated [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Boston-Manchester-Portsmouth (SE), NH:				
Hillsborough County (part)		Nonattainment		Subpart 2/Moderate.
Amherst Town, Bedford Town, Brookline Town, Goffstown Town, Hollis Town, Hudson Town, Litchfield Town, Manchester City, Merrimack Town, Milford Town, Nashua City, Pelham Town				
Merrimack County (part)		Nonattainment		Subpart 2/Moderate.
Hooksett Town				
Rockingham County (part)		Nonattainment		Subpart 2/Moderate.
Atkinson Town, Auburn Town, Brentwood Town, Candia Town, Chester Town, Danville Town, Derry Town, E. Kingston Town, Epping Town, Exeter Town, Fremont Town, Greenland Town, Hampstead Town, Hampton Town, Hampton Falls Town, Kensington Town, Kingston Town, Londonderry Town, New Castle Town, Newfields Town, Newington Town, Newmarket Town, Newton Town, North Hampton Town, Plaistow Town, Portsmouth City, Raymond Town, Rye Town, Salem Town, Sandown Town, Seabrook Town, South Hampton Town, Stratham Town, Windham Town				
Strafford County (part)		Nonattainment		Subpart 2/Moderate.
Dover City, Durham Town, Rochester City, Rollinsford Town, and Somersworth City				
Rest of State:		Unclassifiable/Attainment.		
Belknap County Carroll County Cheshire County Coos County Grafton County Hillsborough County (part) remainder Merrimack County (part) remainder Rockingham County (part) remainder Strafford County (part) remainder Sullivan County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 32. In § 81.331, the table entitled ''New Jersey—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.331 New Jersey.

* * * * *

NEW JERSEY—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Bergen County		Nonattainment		Subpart 2/Moderate.
Essex County		Nonattainment		Subpart 2/Moderate.
Hudson County		Nonattainment		Subpart 2/Moderate.
Hunterdon County		Nonattainment		Subpart 2/Moderate.
Middlesex County		Nonattainment		Subpart 2/Moderate.
Monmouth County		Nonattainment		Subpart 2/Moderate.
Morris County		Nonattainment		Subpart 2/Moderate.
Passaic County		Nonattainment		Subpart 2/Moderate.
Somerset County		Nonattainment		Subpart 2/Moderate.
Sussex County		Nonattainment		Subpart 2/Moderate.
Union County		Nonattainment		Subpart 2/Moderate.
Warren County		Nonattainment		Subpart 2/Moderate.
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE:				
Atlantic County		Nonattainment		Subpart 2/Moderate.
Burlington County		Nonattainment		Subpart 2/Moderate.
Camden County		Nonattainment		Subpart 2/Moderate.
Cape May County		Nonattainment		Subpart 2/Moderate.
Cumberland County		Nonattainment		Subpart 2/Moderate.
Gloucester County		Nonattainment		Subpart 2/Moderate.
Mercer County		Nonattainment		Subpart 2/Moderate.
Ocean County		Nonattainment		Subpart 2/Moderate.
Salem County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 33. In § 81.332, the table entitled ''New Mexico—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.332 New Mexico.

NEW MEXICO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 012 New Mexico-Southern Border Intrastate		Unclassifiable/Attainment.		
Grant County				
Hidalgo County				
Luna County				
AQCR 014 Four Corners Interstate (*see* 40 CFR 81.121)		Unclassifiable/Attainment.		
McKinley County (part)				
Río Arriba County (part)				
San Juan County				
Sandoval County (part)				
Valencia County (part)				
AQCR 152 Albuquerque-Mid Rio Grande Intrastate		Unclassifiable/Attainment.		
Bernalillo County (part)				
AQCR 152 Albuquerque-Mid Rio Grande		Unclassifiable/Attainment.		
Sandoval County (part) *see* 40 CFR 81.83				
Valencia County (part) *see* 40 CFR 81.83				
AQCR 153 El Paso-Las Cruces-Alamogordo		Unclassifiable/Attainment.		
Doña Ana County (part) (Sunland Park Area) The Area bounded by the New Mexico-Texas State line on the east, the New Mexico-Mexico international line on the south, the Range 3E-Range 2E line on the west, and the N3200 latitude line on the north.				
Doña Ana County (part) remainder		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Otero County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		
AQCR 154 Northeastern Plains Intrastate		Unclassifiable/Attainment.		
Colfax County				
Guadalupe County				

NEW MEXICO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Harding County				
Mora County				
San Miguel County				
Torrance County				
Union County				
AQCR 155 Pecos-Permian Basin Intrastate		Unclassifiable/Attainment.		
Chaves County				
Curry County				
De Baca County				
Eddy County				
Lea County				
Quay County				
Roosevelt County				
AQCR 156 SW Mountains-Augustine Plains		Unclassifiable/Attainment.		
Catron County				
Cibola County				
McKinley County (part) *see* 40 CFR 81.241				
Socorro County				
Valencia County (part) *see* 40 CFR 81.241				
AQCR 157 Upper Rio Grande Valley Intrastate		Unclassifiable/Attainment.		
Los Alamos County				
Río Arriba County (part) *see* 40 CFR 81.239				
Santa Fe County				
Taos County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 34. In § 81.333, the table entitled ''New York—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.333 New York.

* * * * *

NEW YORK—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Albany-Schenectady-Troy, NY:				
Albany County		Nonattainment		Subpart 1.
Greene County		Nonattainment		Subpart 1.
Montgomery County		Nonattainment		Subpart 1.
Rensselaer County		Nonattainment		Subpart 1.
Saratoga County		Nonattainment		Subpart 1.
Schenectady County		Nonattainment		Subpart 1.
Schoharie County		Nonattainment		Subpart 1.
Buffalo-Niagara Falls, NY:				
Erie County		Nonattainment		Subpart 1.
Niagara County		Nonattainment		Subpart 1.
Essex County (Whiteface Mtn.), NY:				
Essex County (part) The portion of Whiteface Mountain above 1,900 feet in elevation in Essex County.		Nonattainment		Subpart 1.
Essex County (remainder)		Unclassifiable/Attainment.		
Jamestown, NY:				
Chautauqua County		Nonattainment		Subpart 1.
Jefferson County, NY:				
Jefferson County		Nonattainment		Subpart 2/Moderate.
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Bronx County		Nonattainment		Subpart 2/Moderate.
Kings County		Nonattainment		Subpart 2/Moderate.
Nassau County		Nonattainment		Subpart 2/Moderate.
New York County		Nonattainment		Subpart 2/Moderate.
Queens County		Nonattainment		Subpart 2/Moderate.
Richmond County		Nonattainment		Subpart 2/Moderate.
Rockland County		Nonattainment		Subpart 2/Moderate.
Suffolk County		Nonattainment		Subpart 2/Moderate.
Westchester County		Nonattainment		Subpart 2/Moderate.
Poughkeepsie, NY:				
Dutchess County		Nonattainment		Subpart 2/Moderate.

NEW YORK—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Orange County		Nonattainment		Subpart 2/Moderate.
Putnam County		Nonattainment		Subpart 2/Moderate.
Syracuse, NY:				
Cayuga County		Unclassifiable [b].		
Madison County		Unclassifiable [b].		
Onondaga County		Unclassifiable [b].		
Oswego County		Unclassifiable [b].		
Rochester, NY:				
Genesee County		Nonattainment		Subpart 1.
Livingston County		Nonattainment		Subpart 1.
Monroe County		Nonattainment		Subpart 1.
Ontario County		Nonattainment		Subpart 1.
Orleans County		Nonattainment		Subpart 1.
Wayne County		Nonattainment		Subpart 1.
AQCR 158 Central New York Intrastate (remainder of)		Unclassifiable/Attainment.		
Cortland County				
Herkimer County				
Lewis County				
Oneida County				
AQCR 159 Champlain Valley Interstate (remainder of)		Unclassifiable/Attainment.		
Clinton County				
Franklin County				
Hamilton County				
St. Lawrence County				
Warren County				
Washington County				
AQCR 160 Finger Lake Intrastate		Unclassifiable/Attainment.		
Seneca County				
Wyoming County				
Yates County				
AQCR 161 Hudson Valley Intrastate (remainder of)		Unclassifiable/Attainment.		
Columbia County.				
Fulton County				
Ulster County				
AQCR 163 Southern Tier East Intrastate		Unclassifiable/Attainment.		
Broome County				
Chenango County				
Delaware County				
Otsego County				
Sullivan County				
Tioga County				
AQCR 164 Southern Tier West Intrastate		Unclassifiable/Attainment.		
Allegany County				
Cattaraugus County				
Chemung County				
Schuyler County				
Steuben County				
Tompkins County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[b] This area is given an ''Unclassifiable'' designation. EPA will review all available information and make an attainment or nonattainment decision after reviewing the 2004 data.
[1] This date is June 15, 2004, unless otherwise noted.

■ 35. In § 81.334, the table entitled ''North Carolina—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.334 North Carolina.

* * * * *

NORTH CAROLINA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Charlotte-Gastonia-Rock Hill, NC-SC		Nonattainment		Subpart 2/Moderate.
Cabarrus County		Nonattainment		Subpart 2/Moderate.
Gaston County		Nonattainment		Subpart 2/Moderate.
Iredell County (part).				

NORTH CAROLINA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Davidson Township, Coddle Creek Township	.....	Nonattainment	.....	Subpart 2/Moderate.
Lincoln County	.....	Nonattainment	.....	Subpart 2/Moderate.
Mecklenburg County	.....	Nonattainment	.....	Subpart 2/Moderate.
Rowan County	.....	Nonattainment	.....	Subpart 2/Moderate.
Union County	.....	Nonattainment	.....	Subpart 2/Moderate.
Fayetteville, NC: Cumberland County	(2)	Nonattainment	(2)	Subpart 1.
Greensboro-Winston-Salem-High Point, NC:				
Alamance County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Caswell County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Davidson County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Davie County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Forsyth County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Guilford County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Randolph County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Rockingham County	(2)	Nonattainment	(2)	Subpart 2/Moderate.
Haywood and Swain Cos. (Great Smoky NP), NC:				
Haywood County (part)	.....	Nonattainment	.....	Subpart 1.
Swain County (part)	.....	Nonattainment	.....	Subpart 1.
Hickory-Morganton-Lenoir, NC:				
Alexander County	(2)	Nonattainment	(2)	Subpart 1.
Burke County (part)	(2)	Nonattainment	(2)	Subpart 1.
Unifour Metropolitan Planning Organization Boundary				
Caldwell County (part)	(2)	Nonattainment	(2)	Subpart 1.
Unifour Metropolitan Planning Organization Boundary				
Catawba County	(2)	Nonattainment	(2)	Subpart 1.
Raleigh-Durham-Chapel Hill, NC:				
Chatham County (part)	.....	Nonattainment	.....	Subpart 1.
Baldwin Township, Center Township, New Hope Township, Williams Township				
Durham County	.....	Nonattainment	.....	Subpart 1.
Franklin County	.....	Nonattainment	.....	Subpart 1.
Granville County	.....	Nonattainment	.....	Subpart 1.
Johnston County	.....	Nonattainment	.....	Subpart 1.
Orange County	.....	Nonattainment	.....	Subpart 1.
Person County	.....	Nonattainment	.....	Subpart 1.
Wake County	.....	Nonattainment	.....	Subpart 1.
Rocky Mount, NC:				
Edgecombe County	.....	Nonattainment	.....	Subpart 1.
Nash County	.....	Nonattainment	.....	Subpart 1.
Rest of State:	.....	Unclassifiable/Attainment.		
Alleghany County				
Anson County				
Ashe County				
Avery County				
Beaufort County				
Bertie County				
Bladen County				
Brunswick County				
Buncombe County				
Burke County (part) remainder				
Caldwell County (part) remainder				
Camden County				
Carteret County				
Chatham County (part) remainder				
Cherokee County				
Chowan County				
Clay County				
Cleveland County				
Columbus County				
Craven County				
Currituck County				
Dare County				
Duplin County				
Gates County				
Graham County				
Greene County				
Halifax County				
Harnett County				

NORTH CAROLINA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Haywood County (part) remainder				
Henderson County				
Hertford County				
Hoke County				
Hyde County				
Iredell County (part) remainder				
Jackson County				
Jones County				
Lee County				
Lenoir County				
Macon County				
Madison County				
Martin County				
McDowell County				
Mitchell County				
Montgomery County				
Moore County				
New Hanover County				
Northampton County				
Onslow County				
Pamlico County				
Pasquotank County				
Pender County				
Perquimans County				
Pitt County				
Polk County				
Richmond County				
Robeson County				
Rutherford County				
Sampson County				
Scotland County				
Stanly County				
Stokes County				
Surry County				
Swain County (part) remainder				
Transylvania County				
Tyrrell County				
Vance County				
Warren County				
Washington County				
Watauga County				
Wayne County				
Wilkes County				
Wilson County				
Yadkin County				
Yancey County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 36. In § 81.335, the table entitled ''North Dakota—Ozone(8-Hour Standard)'' is added to read as follows:

§ 81.335 North Dakota.

* * * * *

NORTH DAKOTA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 130 Metropolitan Fargo-Moorhead Interstate:				
Cass County	.....	Unclassifiable/Attainment.		
Rest of State, AQCR 172	.....	Unclassifiable/Attainment.		
Adams County				
Barnes County				
Benson County				
Billings County				
Bottineau County				

NORTH DAKOTA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Bowman County				
Burke County				
Burleigh County				
Cavalier County				
Dickey County				
Divide County				
Dunn County				
Eddy County				
Emmons County				
Foster County				
Golden Valley County				
Grand Forks County				
Grant County				
Griggs County				
Hettinger County				
Kidder County				
LaMoure County				
Logan County				
McHenry County				
McIntosh County				
McKenzie County				
McLean County				
Mercer County				
Morton County				
Mountrail County				
Nelson County				
Oliver County				
Pembina County				
Pierce County				
Ramsey County				
Ransom County				
Renville County				
Richland County				
Rolette County				
Sargent County				
Sheridan County				
Sioux County				
Slope County				
Stark County				
Steele County				
Stutsman County				
Towner County				
Traill County				
Walsh County				
Ward County				
Wells County				
Williams County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 37. In § 81.336, the table entitled ''Ohio—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Canton-Massillion, OH: Stark County		Nonattainment		Subpart 1.
Cincinnati-Hamilton, OH–KY–IN:				
Butler County		Nonattainment		Subpart 1.
Clermont County		Nonattainment		Subpart 1.
Clinton County		Nonattainment		Subpart 1.
Hamilton County		Nonattainment		Subpart 1.
Warren County		Nonattainment		Subpart 1.
Cleveland-Akron-Lorain, OH		Nonattainment		Subpart 2/Moderate.

OHIO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
Columbus, OH:				
Delaware County		Nonattainment		Subpart 1.
Fairfield County		Nonattainment		Subpart 1.
Franklin County		Nonattainment		Subpart 1.
Knox County		Nonattainment		Subpart 1.
Licking County		Nonattainment		Subpart 1.
Madison County		Nonattainment	Subpart 1.	
Dayton-Springfield, OH:				
Clark County		Nonattainment		Subpart 1.
Greene County		Nonattainment		Subpart 1.
Miami County		Nonattainment		Subpart 1.
Montgomery County		Nonattainment		Subpart 1.
Lima, OH: Allen County		Nonattainment		Subpart 1.
Parkersburg-Marietta, WV–OH: Washington County.		Nonattainment		Subpart 1.
Steubenville-Weirton, OH–WV: Jefferson County.		Nonattainment		Subpart 1.
Toledo, OH:				
Lucas County		Nonattainment		Subpart 1.
Wood County		Nonattainment		Subpart 1.
Wheeling, WV–OH: Belmont County		Nonattainment		Subpart 1.
Youngstown-Warren-Sharon, PA–OH:				
Columbiana County		Nonattainment		Subpart 1.
Mahoning County		Nonattainment		Subpart 1.
Trumbull County		Nonattainment		Subpart 1.
Rest of State:				
Adams County		Unclassifiable/Attainment.		
Ashland County		Unclassifiable/Attainment.		
Athens County.				
Auglaize County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Carroll County		Unclassifiable/Attainment.		
Champaign County		Unclassifiable/Attainment.		
Coshocton County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Darke County		Unclassifiable/Attainment.		
Defiance County		Unclassifiable/Attainment.		
Erie County		Unclassifiable/Attainment.		
Fayette County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Gallia County		Unclassifiable/Attainment.		
Guernsey County		Unclassifiable/Attainment.		
Hancock County		Unclassifiable/Attainment.		
Hardin County		Unclassifiable/Attainment.		
Harrison County		Unclassifiable/Attainment.		
Henry County		Unclassifiable/Attainment.		
Highland County		Unclassifiable/Attainment.		
Hocking County		Unclassifiable/Attainment.		
Holmes County		Unclassifiable/Attainment.		
Huron County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Logan County		Unclassifiable/Attainment.		
Marion County		Unclassifiable/Attainment.		
Meigs County		Unclassifiable/Attainment.		
Mercer County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Morgan County		Unclassifiable/Attainment.		
Morrow County		Unclassifiable/Attainment.		
Muskingum County		Unclassifiable/Attainment.		
Noble County		Unclassifiable/Attainment.		
Ottawa County		Unclassifiable/Attainment.		

OHIO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Paulding County		Unclassifiable/Attainment.		
Perry County		Unclassifiable/Attainment.		
Pickaway County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Preble County		Unclassifiable/Attainment.		
Putnam County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Ross County		Unclassifiable/Attainment.		
Sandusky County		Unclassifiable/Attainment.		
Scioto County		Unclassifiable/Attainment.		
Seneca County		Unclassifiable/Attainment.		
Shelby County		Unclassifiable/Attainment.		
Tuscarawas County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Van Wert County		Unclassifiable/Attainment.		
Vinton County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		
Williams County		Unclassifiable/Attainment.		
Wyandot County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 38. In § 81.337, the table entitled ''Oklahoma—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.337 Oklahoma.

* * * * *

OKLAHOMA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 017 Metropolitan Fort Smith Interstate		Unclassifiable/Attainment.		
Adair County				
Cherokee County				
Le Flore County				
Sequoyah County				
AQCR 022 Shreveport-Texarkana-Tyler Intrastate: McCurtain County.		Unclassifiable/Attainment		
AQCR 184 Central Oklahoma Intrastate (part):				
Cleveland County		Unclassifiable/Attainment.		
Oklahoma County		Unclassifiable/Attainment.		
AQCR 184 Central Oklahoma Intrastate (remainder of)		Unclassifiable/Attainment.		
Canadian County				
Grady County				
Kingfisher County				
Lincoln County				
Logan County				
McClain County				
Pottawatomie County				
AQCR 185 North Central Oklahoma Intrastate		Unclassifiable/Attainment.		
Garfield County				
Grant County				
Kay County				
Noble County				
Payne County				
AQCR 186 Northeastern Oklahoma Intrastate		Unclassifiable/Attainment.		
Craig County				
Creek County				
Delaware County				
Mayes County				
Muskogee County				
Nowata County				
Okmulgee County				
Osage County				
Ottawa County				
Pawnee County				
Rogers County				

OKLAHOMA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Tulsa County				
Wagoner County				
Washington County				
AQCR 187 Northwestern Oklahoma Intrastate	.....	Unclassifiable/Attainment.		
Alfalfa County				
Beaver County				
Blaine County				
Cimarron County				
Custer County				
Dewey County				
Ellis County				
Harper County				
Major County				
Roger Mills County				
Texas County				
Woods County				
Woodward County				
AQCR 188 Southeastern Oklahoma Intrastate	.....	Unclassifiable/Attainment.		
Atoka County				
Bryan County				
Carter County				
Choctaw County				
Coal County				
Garvin County				
Haskell County				
Hughes County				
Johnston County				
Latimer County				
Love County				
Marshall County				
McIntosh County				
Murray County				
Okfuskee County				
Pittsburg County				
Pontotoc County				
Pushmataha County				
Seminole County				
AQCR 189 Southwestern Oklahoma Intrastate	.....	Unclassifiable/Attainment.		
Beckham County				
Caddo County				
Comanche County				
Cotton County				
Greer County				
Harmon County				
Jackson County				
Jefferson County				
Kiowa County				
Stephens County				
Tillman County				
Washita County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 39. In § 81.338, the table entitled ''Oregon—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.338 Oregon.

OREGON—OZONE (8-HOUR STANDARD)

Designated area	Designation area [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA: (Air Quality Maintenance Area)		Unclassifiable/Attainment..		

OREGON—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation area [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Clackamas County (part)				
Multnomah County (part)				
Washington County (part)				
Salem Area: (Salem Area Transportation Study)				
Marion County (part)		Unclassifiable/Attainment..		
Polk County		Unclassifiable/Attainment..		
AQCR 190 Central Oregon Intrastate (remainder of)		Unclassifiable/Attainment..		
Crook County				
Deschutes County				
Hood River County				
Jefferson County				
Klamath County				
Lake County				
Sherman County				
Wasco County				
AQCR 191 Eastern Oregon Intrastate		Unclassifiable/Attainment..		
Baker County				
Gilliam County				
Grant County				
Harney County				
Malheur County				
Morrow County				
Umatilla County				
Union County				
Wallowa County				
Wheeler County				
AQCR 192 Northwest Oregon Intrastate		Unclassifiable/Attainment..		
Clatsop County				
Lincoln County				
Tillamook County				
AQCR 193 Portland Interstate (part)		Unclassifiable/Attainment..		
Lane County (part) Eugene Springfield Air Quality Maintenance Area				
AQCR 193 Portland Interstate (remainder of)		Unclassifiable/Attainment..		
Benton County				
Clackamas County (part) remainder				
Columbia County				
Lane County (part) remainder				
Linn County				
Marion County (part) The area outside the Salem Area Transportation Study				
Multnomah County (part) remainder				
Polk County (part) The area outside the Salem Area Transportation Study				
Washington County (part) remainder				
Yamhill County				
AQCR 194 Southwest Oregon Intrastate (part)				
Jackson County (part) Medford-Ashland Air Quality Maintenance Area.		Unclassifiable/Attainment..		
AQCR 194 Southwest Oregon Intrastate (remainder of)		Unclassifiable/Attainment..		
Coos County				
Curry County				
Douglas County				
Jackson County (part) remainder				
Josephine County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 40. In § 81.339, the table entitled ''Pennsylvania—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Allentown-Bethlehem-Easton, PA:				
Carbon County		Nonattainment		Subpart 1.
Lehigh County		Nonattainment		Subpart 1.
Northampton County		Nonattainment		Subpart 1.
Altoona, PA: Blair County		Nonattainment		Subpart 1.
Clearfield & Indiana Cos., PA:				
Clearfield County		Nonattainment		Subpart 1.
Indiana County		Nonattainment		Subpart 1.
Erie, PA: Erie County		Nonattainment		Subpart 1.
Franklin Co., PA: Franklin County		Nonattainment		Subpart 1.
Greene Co., PA: Greene County		Nonattainment		Subpart 1.
Harrisburg-Lebanon-Carlisle, PA:				
Cumberland County		Nonattainment		Subpart 1.
Dauphin County		Nonattainment		Subpart 1.
Lebanon County		Nonattainment		Subpart 1.
Perry County		Nonattainment		Subpart 1.
Johnstown, PA: Cambria County		Nonattainment		Subpart 1.
Lancaster, PA: Lancaster County		Nonattainment		Subpart 2/Moderate.
Philadelphia-Wilmington-Atlantic City, PA–NJ–MD–DE:				
Bucks County		Nonattainment		Subpart 2/Moderate.
Chester County		Nonattainment		Subpart 2/Moderate.
Delaware County		Nonattainment		Subpart 2/Moderate.
Montgomery County		Nonattainment		Subpart 2/Moderate.
Philadelphia County		Nonattainment		Subpart 2/Moderate.
Pittsburgh-Beaver Valley, PA:				
Allegheny County		Nonattainment		Subpart 1.
Armstrong County		Nonattainment		Subpart 1.
Beaver County		Nonattainment		Subpart 1.
Butler County		Nonattainment		Subpart 1.
Fayette County		Nonattainment		Subpart 1.
Washington County		Nonattainment		Subpart 1.
Westmoreland County		Nonattainment		Subpart 1.
Reading, PA: Berks County		Nonattainment		Subpart 1.
Scranton-Wilkes-Barre, PA:				
Lackawanna County		Nonattainment		Subpart 1.
Luzerne County		Nonattainment		Subpart 1.
Monroe County		Nonattainment		Subpart 1.
Wyoming County		Nonattainment		Subpart 1.
State College, PA: Centre County		Nonattainment		Subpart 1.
Tioga Co., PA: Tioga County		Nonattainment		Subpart 1.
Williamsport, PA: Lycoming County		Unclassifiable/Attainment.		
York, PA:				
Adams County		Nonattainment		Subpart 1.
York County		Nonattainment		Subpart 1.
Youngstown-Warren-Sharon, PA–OH: Mercer County		Nonattainment		Subpart 1.
AQCR 151 NE Pennsylvania Intrastate (remainder of):				
Bradford County		Unclassifiable/Attainment.		
Sullivan County		Unclassifiable/Attainment.		
AQCR 178 NW Pennsylvania Interstate (remainder of):				
Cameron County		Unclassifiable/Attainment.		
Clarion County		Unclassifiable/Attainment.		
Elk County		Unclassifiable/Attainment.		
Forest County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
McKean County		Unclassifiable/Attainment.		
Potter County		Unclassifiable/Attainment.		
Venango County		Unclassifiable/Attainment.		
AQCR 195 Central Pennsylvania Intrastate (remainder of):				
Bedford County		Unclassifiable/Attainment.		
Clinton County		Unclassifiable/Attainment.		
Fulton County		Unclassifiable/Attainment.		
Huntingdon County		Unclassifiable/Attainment.		
Mifflin County		Unclassifiable/Attainment.		
Montour County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		

PENNSYLVANIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Rest of State		Unclassifiable/Attainment.		
Columbia County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Juniata County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Northumberland County		Unclassifiable/Attainment.		
Pike County		Unclassifiable/Attainment.		
Schuylkill County		Unclassifiable/Attainment.		
Snyder County		Unclassifiable/Attainment.		
Somerset County		Unclassifiable/Attainment.		
Susquehanna County		Unclassifiable/Attainment.		
Warren County		Unclassifiable/Attainment.		
Wayne County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 41. In § 81.340, the table entitled ''Rhode Island—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.340 Rhode Island.

* * * * *

RHODE ISLAND—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Providence (all of RI), RI:				
Bristol County		Nonattainment		Subpart 2/Moderate.
Kent County		Nonattainment		Subpart 2/Moderate.
Newport County		Nonattainment		Subpart 2/Moderate.
Providence County		Nonattainment		Subpart 2/Moderate.
Washington County		Nonattainment		Subpart 2/Moderate.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 42. In § 81.341, the table entitled ''South Carolina—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.341 South Carolina.

SOUTH CAROLINA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Columbia, SC:				
Lexington County (part)	(2)	Nonattainment	(2)	Subpart 1.
Portion along MPO lines				
Richland County (part)	(2)	Nonattainment	(2)	Subpart 1.
Portion along MPO lines				
Greenville-Spartanburg-Anderson, SC:				
Anderson County	(2)	Nonattainment	(2)	Subpart 1.
Greenville County	(2)	Nonattainment	(2)	Subpart 1.
Spartanburg County	(2)	Nonattainment	(2)	Subpart 1.
Charlotte-Gastonia-Rock Hill, NC-SC:				
York County (part)		Nonattainment		Subpart 2/Moderate.
Portion along MPO lines				
Rest of State:		Unclassifiable/Attainment.		
Abbeville County				
Aiken County				
Allendale County				
Bamberg County				
Barnwell County				
Beaufort County				
Berkeley County				
Calhoun County				
Charleston County				

SOUTH CAROLINA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Cherokee County				
Chester County				
Chesterfield County				
Clarendon County				
Colleton County				
Darlington County				
Dillon County				
Dorchester County				
Edgefield County				
Fairfield County				
Florence County				
Georgetown County				
Greenwood County				
Hampton County				
Horry County				
Jasper County				
Kershaw County				
Lancaster County				
Laurens County				
Lee County				
Lexington County (part) remainder				
Marion County				
Marlboro County				
McCormick County				
Newberry County				
Oconee County				
Orangeburg County				
Pickens County				
Richland County (part) remainder				
Saluda County				
Sumter County				
Union County				
Williamsburg County				
York County (part) remainder				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 43. In § 81.342, the table entitled ''South Dakota—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.342 South Dakota.

SOUTH DAKOTA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Aurora County		Unclassifiable/Attainment.		
Beadle County		Unclassifiable/Attainment.		
Bennett County		Unclassifiable/Attainment.		
Bon Homme County		Unclassifiable/Attainment.		
Brookings County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Brule County		Unclassifiable/Attainment.		
Buffalo County		Unclassifiable/Attainment.		
Butte County		Unclassifiable/Attainment.		
Campbell County		Unclassifiable/Attainment.		
Charles Mix County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		
Clay County		Unclassifiable/Attainment.		
Codington County		Unclassifiable/Attainment.		
Corson County		Unclassifiable/Attainment.		
Custer County		Unclassifiable/Attainment.		
Davison County		Unclassifiable/Attainment.		
Day County		Unclassifiable/Attainment.		
Deuel County		Unclassifiable/Attainment.		

SOUTH DAKOTA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Dewey County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Edmunds County		Unclassifiable/Attainment.		
Fall River County		Unclassifiable/Attainment.		
Faulk County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Gregory County		Unclassifiable/Attainment.		
Haakon County		Unclassifiable/Attainment.		
Hamlin County		Unclassifiable/Attainment.		
Hand County		Unclassifiable/Attainment.		
Hanson County		Unclassifiable/Attainment.		
Harding County		Unclassifiable/Attainment.		
Hughes County		Unclassifiable/Attainment.		
Hutchinson County		Unclassifiable/Attainment.		
Hyde County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jerauld County		Unclassifiable/Attainment.		
Jones County		Unclassifiable/Attainment.		
Kingsbury County		Unclassifiable/Attainment.		
Lake County		Unclassifiable/Attainment.		
Lawrence County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Lyman County		Unclassifiable/Attainment.		
Marshall County		Unclassifiable/Attainment.		
McCook County		Unclassifiable/Attainment.		
McPherson County		Unclassifiable/Attainment.		
Meade County		Unclassifiable/Attainment.		
Mellette County		Unclassifiable/Attainment.		
Miner County		Unclassifiable/Attainment.		
Minnehaha County		Unclassifiable/Attainment.		
Moody County		Unclassifiable/Attainment.		
Pennington County		Unclassifiable/Attainment.		
Perkins County		Unclassifiable/Attainment.		
Potter County		Unclassifiable/Attainment.		
Roberts County		Unclassifiable/Attainment.		
Sanborn County		Unclassifiable/Attainment.		
Shannon County		Unclassifiable/Attainment.		
Spink County		Unclassifiable/Attainment.		
Stanley County		Unclassifiable/Attainment.		
Sully County		Unclassifiable/Attainment.		
Todd County		Unclassifiable/Attainment.		
Tripp County		Unclassifiable/Attainment.		
Turner County		Unclassifiable/Attainment.		
Union County		Unclassifiable/Attainment.		
Walworth County		Unclassifiable/Attainment.		
Yankton County		Unclassifiable/Attainment.		
Ziebach County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 44. In § 81.343, the table entitled ''Tennessee—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.343 Tennessee.

* * * * *

TENNESSEE—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Chattanooga, TN-GA:				
Hamilton County		Nonattainment		Subpart 1.
Meigs County		Nonattainment		Subpart 1.
Clarkesville-Hopkinsville, TN-KY:				
Montgomery County		Nonattainment		Subpart 1.
Johnson City-Kingsport-Bristol, TN:				
Hawkins County	(2)	Nonattainment	(2)	Subpart 1.
Sullivan County	(2)	Nonattainment	(2)	Subpart 1.

TENNESSEE—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Knoxville, TN:				
Anderson County		Nonattainment		Subpart 1.
Blount County		Nonattainment		Subpart 1.
Cocke County (part)		Nonattainment		Subpart 1.
(Great Smoky Mtn Park)				
Jefferson County		Nonattainment		Subpart 1.
Knox County		Nonattainment		Subpart 1.
Loudon County		Nonattainment		Subpart 1.
Sevier County		Nonattainment		Subpart 1.
Memphis, TN-AR:				
Shelby County		Nonattainment		Subpart 2/Moderate.
Nashville, TN:				
Davidson County	(2)	Nonattainment	(2)	Subpart 1.
Rutherford County	(2)	Nonattainment	(2)	Subpart 1.
Sumner County	(2)	Nonattainment	(2)	Subpart 1
Williamson County	(2)	Nonattainment	(2)	Subpart 1.
Wilson County	(2)	Nonattainment	(2)	Subpart 1.
Rest of State		Unclassifiable/Attainment.		
Bedford County				
Benton County				
Bledsoe County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				
Cocke County (part) remainder				
Coffee County				
Crockett County				
Cumberland County				
Decatur County				
DeKalb County				
Dickson County				
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hancock County				
Hardeman County				
Hardin County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Johnson County				
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				

TENNESSEE—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Monroe County				
Moore County				
Morgan County				
Obion County				
Overton County				
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Scott County				
Sequatchie County				
Smith County				
Stewart County				
Tipton County				
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

45. In § 81.344, the table entitled ''Texas—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Beaumont/Port Arthur, TX:				
Hardin County		Nonattainment		Subpart 2/Marginal.
Jefferson County		Nonattainment		Subpart 2/Marginal.
Orange County		Nonattainment		Subpart 2/Marginal.
Dallas-Fort Worth, TX:				
Collin County		Nonattainment		Subpart 2/Moderate.
Dallas County		Nonattainment		Subpart 2/Moderate.
Denton County		Nonattainment		Subpart 2/Moderate.
Ellis County		Nonattainment		Subpart 2/Moderate.
Johnson County		Nonattainment		Subpart 2/Moderate.
Kaufman County		Nonattainment		Subpart 2/Moderate.
Parker County		Nonattainment		Subpart 2/Moderate.
Rockwall County		Nonattainment		Subpart 2/Moderate.
Tarrant County		Nonattainment		Subpart 2/Moderate.
Houston-Galveston-Brazoria, TX:				
Brazoria County		Nonattainment		Subpart 2/Moderate.
Chambers County		Nonattainment		Subpart 2/Moderate.
Fort Bend County		Nonattainment		Subpart 2/Moderate.
Galveston County		Nonattainment		Subpart 2/Moderate.
Harris County		Nonattainment		Subpart 2/Moderate.
Liberty County		Nonattainment		Subpart 2/Moderate.
Montgomery County		Nonattainment		Subpart 2/Moderate.
Waller County		Nonattainment		Subpart 2/Moderate.
San Antonio, TX:				
Bexar County	(2)	Nonattainment	(2)	Subpart 1.
Comal County	(2)	Nonattainment	(2)	Subpart 1.
Guadalupe County	(2)	Nonattainment	(2)	Subpart 1.
Victoria Area:				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Victoria County	.....	Unclassifiable/Attainment.		
AQCR 022 Shreveport-Texarkana-Tyler Interstate	.....	Unclassifiable/Attainment.		
Anderson County				
Bowie County				
Camp County				
Cass County				
Cherokee County				
Delta County				
Franklin County				
Gregg County				
Harrison County				
Hopkins County				
Lamar County				
Marion County				
Morris County				
Panola County				
Rains County				
Red River County				
Rusk County				
Smith County				
Titus County				
Upshur County				
Van Zandt County				
Wood County				
AQCR 106 S Louisiana-SE Texas Interstate (remainder of).	.....	Unclassifiable/Attainment.		
Angelina County				
Houston County				
Jasper County				
Nacogdoches County				
Newton County				
Polk County				
Sabine County				
San Augustine County				
San Jacinto County				
Shelby County				
Trinity County				
Tyler County				
AQCR 153 El Paso-Las Cruces-Alamogordo Interstate	.....	Unclassifiable/Attainment.		
Brewster County				
Culberson County				
El Paso County				
Hudspeth County				
Jeff Davis County				
Presidio County				
AQCR 210 Abilene-Wichita Falls Intrastate	.....	Unclassifiable/Attainment.		
Archer County				
Baylor County				
Brown County				
Callahan County				
Clay County				
Coleman County				
Comanche County				
Cottle County				
Eastland County				
Fisher County				
Foard County				
Hardeman County				
Haskell County				
Jack County				
Jones County				
Kent County				
Knox County				
Mitchell County				
Montague County				
Nolan County				
Runnels County				
Scurry County				
Shackelford County				
Stephens County				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Stonewall County				
Taylor County				
Throckmorton County				
Wichita County				
Wilbarger County				
Young County				
AQCR 211 Amarillo-Lubbock Intrastate	.....	Unclassifiable/Attainment.		
Armstrong County				
Bailey County				
Briscoe County				
Carson County				
Castro County				
Childress County				
Cochran County				
Collingsworth County				
Crosby County				
Dallam County				
Deaf Smith County				
Dickens County				
Donley County				
Floyd County				
Garza County				
Gray County				
Hale County				
Hall County				
Hansford County				
Hartley County				
Hemphill County				
Hockley County				
Hutchinson County				
King County				
Lamb County				
Lipscomb County				
Lubbock County				
Lynn County				
Moore County				
Motley County				
Ochiltree County				
Oldham County				
Parmer County				
Potter County				
Randall County				
Roberts County				
Sherman County				
Swisher County				
Terry County				
Wheeler County				
Yoakum County				
AQCR 212 Austin-Waco Intrastate	.....	Unclassifiable/Attainment.		
Bastrop County				
Bell County				
Blanco County				
Bosque County				
Brazos County				
Burleson County				
Burnet County				
Caldwell County				
Coryell County				
Falls County				
Fayette County				
Freestone County				
Grimes County				
Hamilton County				
Hays County				
Hill County				
Lampasas County				
Lee County				
Leon County				
Limestone County				
Llano County				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Madison County				
McLennan County				
Milam County				
Mills County				
Robertson County				
San Saba County				
Travis County				
Washington County				
Williamson County				
AQCR 213 Brownsville-Laredo Intrastate	.....	Unclassifiable/Attainment.		
Cameron County				
Hidalgo County				
Jim Hogg County				
Starr County				
Webb County				
Willacy County				
Zapata County				
AQCR 214 Corpus Christi-Victoria Intrastate (remainder of).	.....	Unclassifiable/Attainment.		
Aransas County				
Bee County				
Brooks County				
Calhoun County				
DeWitt County				
Duval County				
Goliad County				
Gonzales County				
Jackson County				
Jim Wells County				
Kenedy County				
Kleberg County				
Lavaca County				
Live Oak County				
McMullen County				
Refugio County				
San Patricio County				
AQCR 214 Corpus Christi-Victoria Intrastate (part)	.....	Unclassifiable/Attainment.		
Nueces County				
AQCR 215 Metro Dallas-Fort Worth Intrastate (remainder of).	.....	Unclassifiable/Attainment.		
Cooke County				
Erath County				
Fannin County				
Grayson County				
Henderson County				
Hood County				
Hunt County				
Navarro County				
Palo Pinto County				
Somervell County				
Wise County				
AQCR 216 Metro Houston-Galveston Intrastate (remainder of).	.....	Unclassifiable/Attainment.		
Austin County				
Colorado County				
Matagorda County				
Walker County				
Wharton County				
AQCR 217 Metro San Antonio Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Atascosa County				
Bandera County				
Dimmit County				
Edwards County				
Frio County				
Gillespie County				
Karnes County				
Kendall County				
Kerr County				
Kinney County				
La Salle County				

TEXAS—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Maverick County				
Medina County				
Real County				
Uvalde County				
Val Verde County				
Wilson County				
Zavala County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (part)	.....	Unclassifiable/Attainment.		
Ector County				
AQCR 218 Midland-Odessa-San Angelo Intrastate (remainder of).	.....	Unclassifiable/Attainment.		
Andrews County				
Borden County				
Coke County				
Concho County				
Crane County				
Crockett County				
Dawson County				
Gaines County				
Glasscock County				
Howard County				
Irion County				
Kimble County				
Loving County				
Martin County				
Mason County				
McCulloch County				
Menard County				
Midland County				
Pecos County				
Reagan County				
Reeves County				
Schleicher County				
Sterling County				
Sutton County				
Terrell County				
Tom Green County				
Upton County				
Ward County				
Winkler County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 46. In § 81.345, the table entitled ''Utah—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.345 Utah.

* * * * *

UTAH—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Salt Lake City Area:				
Davis County	.....	Unclassifiable/Attainment.		
Salt Lake County	.....	Unclassifiable/Attainment.		
Rest of State:	.....	Unclassifiable/Attainment.		
Beaver County				
Box Elder County				
Cache County				
Carbon County				
Daggett County				
Duchesne County				
Emery County				
Garfield County				
Grand County				
Iron County				

UTAH—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Juab County				
Kane County				
Millard County				
Morgan County				
Piute County				
Rich County				
San Juan County				
Sanpete County				
Sevier County				
Summit County				
Tooele County				
Uintah County				
Utah County				
Wasatch County				
Washington County				
Wayne County				
Weber County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 47. In § 81.346, the table entitled ''Vermont—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.346 Vermont.

* * * * *

VERMONT—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
AQCR 159 Champlain Valley Interstate (part)				
Addison County	.....	Unclassifiable/Attainment.		
Chittenden County	.....	Unclassifiable/Attainment.		
AQCR 159 Champlain Calley Interstate (remainder of)	.....	Unclassifiable/Attainment.		
Franklin County				
Grand Isle County				
Rutland County				
AQCR 221 Vermont Intrastate (part)	.....	Unclassifiable/Attainment.		
Windsor County				
AQCR 221 Vermont Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Bennington County				
Caledonia County				
Essex County				
Lamoille County				
Orange County				
Orleans County				
Washington County				
Windham County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 48. In § 81.347, the table entitled ''Virginia—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Frederick Co., VA:				
Frederick County	([2])	Nonattainment	([2])	Subpart 1.
Winchester City	([2])	Nonattainment	([2])	Subpart 1.
Fredericksburg, VA:				
City of Fredericksburg	.....	Nonattainment	.....	Subpart 2/Moderate.

VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Spotsylvania County		Nonattainment		Subpart 2/Moderate.
Stafford County		Nonattainment		Subpart 2/Moderate.
Madison & Page Cos. (Shenandoah NP), VA:				
Madison County (part)		Nonattainment		Subpart 1.
Page County (part)		Nonattainment		Subpart 1.
Norfolk-Virginia Beach-Newport News (Hampton Roads), VA:				
Chesapeake City		Nonattainment		Subpart 2/Marginal.
Gloucester County		Nonattainment		Subpart 2/Marginal.
Hampton City		Nonattainment		Subpart 2/Marginal.
Isle of Wight County		Nonattainment		Subpart 2/Marginal.
James City County		Nonattainment		Subpart 2/Marginal.
Newport News City		Nonattainment		Subpart 2/Marginal.
Norfolk City		Nonattainment		Subpart 2/Marginal.
Poquoson City		Nonattainment		Subpart 2/Marginal.
Portsmouth City		Nonattainment		Subpart 2/Marginal.
Suffolk City		Nonattainment		Subpart 2/Marginal.
Virginia Beach City		Nonattainment		Subpart 2/Marginal.
Williamsburg City		Nonattainment		Subpart 2/Marginal.
York County		Nonattainment		Subpart 2/Marginal.
Richmond-Petersburg, VA:				
Charles City County		Nonattainment		Subpart 2/Moderate.
Chesterfield County		Nonattainment		Subpart 2/Moderate.
Colonial Heights City		Nonattainment		Subpart 2/Moderate.
Hanover County		Nonattainment		Subpart 2/Moderate.
Henrico County		Nonattainment		Subpart 2/Moderate.
Hopewell City		Nonattainment		Subpart 2/Moderate.
Petersburg City		Nonattainment		Subpart 2/Moderate.
Prince George County		Nonattainment		Subpart 2/Moderate.
Richmond City		Nonattainment		Subpart 2/Moderate.
Roanoke, VA:				
Botetourt County	(2)	Nonattainment	(2)	Subpart 1.
Roanoke City	(2)	Nonattainment	(2)	Subpart 1.
Roanoke County	(2)	Nonattainment	(2)	Subpart 1.
Salem City	(2)	Nonattainment	(2)	Subpart 1.
Washington, DC-MD-VA:				
Alexandria City		Nonattainment		Subpart 2/Moderate.
Arlington County		Nonattainment		Subpart 2/Moderate.
Fairfax City		Nonattainment		Subpart 2/Moderate.
Fairfax County		Nonattainment		Subpart 2/Moderate.
Falls Church City		Nonattainment		Subpart 2/Moderate.
Loudoun County		Nonattainment		Subpart 2/Moderate.
Manassas City		Nonattainment		Subpart 2/Moderate.
Manassas Park City		Nonattainment		Subpart 2/Moderate.
Prince William County		Unattainment		Subpart 2/Moderate.
AQCR 207 Eastern Tennessee-SW Virginia Interstate (remainder of).		Unclassifiable/Attainment.		
Bland County				
Bristol City				
Buchanan County				
Carroll County				
Dickenson County				
Galax City				
Grayson County				
Lee County				
Norton City				
Russell County				
Scott County				
Smyth County				
Tazewell County				
Washington County				
Wise County				
Wythe County				
AQCR 222 Central Virginia Intrastate		Unclassifiable/Attainment.		
Amelia County				
Amherst County				
Appomattox County				
Bedford City				
Bedford County				
Brunswick County				

VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Buckingham County				
Campbell County				
Charlotte County				
Cumberland County				
Danville City				
Franklin County				
Halifax County				
Henry County				
Lunenburg County				
Lynchburg City				
Martinsville City				
Mecklenburg County				
Nottoway County				
Patrick County				
Pittsylvania County				
Prince Edward County				
AQCR 223 Hampton Roads Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Franklin City				
Southampton County				
AQCR 224 NE Virginia Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Accomack County				
Albemarle County				
Caroline County				
Charlottesville City				
Culpeper County				
Essex County				
Fauquier County				
Fluvanna County				
Greene County				
King and Queen County				
King George County				
King William County				
Lancaster County				
Louisa County				
Madison County (part) remainder				
Mathews County				
Middlesex County				
Nelson County				
Northampton County				
Northumberland County				
Orange County				
Rappahannock County				
Richmond County				
Westmoreland County				
AQCR 225 State Capital Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
Dinwiddie County				
Emporia City				
Goochland County				
Greensville County				
New Kent County				
Petersburg City				
Powhatan County				
Surry County				
Sussex County				
AQCR 226 Valley of Virginia Intrastate	.....	Unclassifiable/Attainment.		
Alleghany County				
Augusta County				
Bath County				
Buena Vista City				
Clarke County				
Covington City				
Craig County				
Floyd County				
Giles County				
Harrisonburg City				
Highland County				
Lexington City				
Montgomery County				
Page County (part) remainder				
Pulaski County				

VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Radford City Rockbridge County Rockingham County Shenandoah County Staunton City Warren County Waynesboro City				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 49. In § 81.348, the table entitled ''Washington—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.348 Washington.

* * * * *

WASHINGTON—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Portland-Vancouver AQMA Area: Clark County (part) ..... Air Quality Maintenance Area	....	Unclassifiable/Attainment. Unclassifiable/Attainment.		
Seattle-Tacoma Area:				

WASHINGTON—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
The following boundary includes all of Pierce County, and all of King County except a small portion on the north-east corner and the western portion of Snohomish County: Starting at the mouth of the Nisqually river extend northwesterly along the Pierce County line to the southernmost point of the west county line of King County; thence northerly along the county line to the southernmost point of the west county line of Snohomish County; thence northerly along the county line to the intersection with SR 532; thence easterly along the north line of SR 532 to the intersection of I–5, continuing east along the same road now identified as Henning Rd., to the intersection with SR 9 at Bryant; thence continuing easterly on Bryant East Rd. and Rock Creek Rd., also identified as Grandview Rd., approximately 3 miles to the point at which it is crossed by the existing BPA electrical transmission line; thence southeasterly along the BPA transmission line approximately 8 miles to point of the crossing of the south fork of the Stillaguamish River; thence continuing in a southeasterly direction in a meander line following the bed of the River to Jordan Road; southerly along Jordan Road to the north city limits of Granite Falls; thence following the north and east city limits to 92nd St. NE., and Menzel Lake Rd.; thence south-southeasterly along the Menzel Lake Rd., and the Lake Roesiger Rd., a distance of approximately 6 miles to the northernmost point of Lake Roesiger; thence southerly along a meander line following the middle of the Lake and Roesiger Creek to Woods Creek; thence southerly along a meander line following the bed of the Creek approximately 6 miles to the point the Creek is crossed by the existing BPA electrical transmission line; thence easterly along the BPA transmission line approximately 0.2 miles; thence southerly along the BPA Chief Joseph-Covington electrical transmission line approximately 3 miles to the north line of SR 2; thence southeasterly along SR 2 to the intersection with the east county line of King County; thence south along the county line to the northernmost point of the east county line of Pierce County; thence along the county line to the point of beginning at the mouth of the Nisqually River.				
AQCR 062 E Washington-N Idaho Interstate (part)	.....	Unclassifiable/Attainment.		
Spokane County	.....	Unclassifiable/Attainment.		
AQCR 062 E Washington-N Idaho Interstate (remainder of).	.....	Unclassifiable/Attainment.		
Adams County				
Asotin County				
Columbia County				
Garfield County				
Grant County				
Lincoln County				
Whitman County				
AQCR 193 Portland Interstate (remainder of)	.....	Unclassifiable/Attainment.		
Clark County (part) remainder				
Cowlitz County				
Lewis County				
Skamania County				
Wahkiakum County				
AQCR 227 Northern Washington Intrastate	.....	Unclassifiable/Attainment.		
Chelan County				
Douglas County				
Ferry County				
Okanogan County				
Pend Oreille County				
Stevens County				
AQCR 228 Olympic-Northwest Washington Intrastate	.....	Unclassifiable/Attainment.		

WASHINGTON—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Clallam County				
Grays Harbor County				
Island County				
Jefferson County				
Mason County				
Pacific County				
San Juan County				
Skagit County				
Thurston County				
Whatcom County				
AQCR 229 Puget Sound Intrastate (remainder of)	.....	Unclassifiable/Attainment.		
King County (part) remainder				
Kitsap County				
Snohomish County (part) remainder				
AQCR 230 South Central Washington Intrastate	.....	Unclassifiable/Attainment.		
Benton County				
Franklin County				
Kittitas County				
Klickitat County				
Walla Walla County				
Yakima County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 50. In § 81.349, the table entitled ''West Virginia—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Berkeley & Jefferson Cos, WV:				
Berkeley County	(2)	Nonattainment	(2)	Subpart 1.
Jefferson County	(2)	Nonattainment	(2)	Subpart 1.
Charleston, WV:				
Kanawha County	.....	Nonattainment	.....	Subpart 1.
Putnam County	.....	Nonattainment	.....	Subpart 1.
Huntington-Ashland, WV-KY:				
Cabell County	.....	Nonattainment	.....	Subpart 1.
Wayne County	.....	Nonattainment	.....	Subpart 1.
Parkersburg-Marietta, WV-OH:				
Wood County	.....	Nonattainment	.....	Subpart 1.
Wheeling, WV-OH:				
Marshall County	.....	Nonattainment	.....	Subpart 1.
Ohio County	.....	Nonattainment	.....	Subpart 1.
Steubenville-Weirton, OH-WV:				
Brooke County	.....	Nonattainment	.....	Subpart 1.
Hancock County	.....	Nonattainment	.....	Subpart 1.
Rest of State	.....	Unclassifiable/Attainment.		
Barbour County				
Boone County				
Braxton County				
Calhoun County				
Clay County				
Doddridge County				
Fayette County				
Gilmer County				
Grant County				
Greenbrier County				
Hampshire County				
Hardy County				
Harrison County				
Jackson County				
Lewis County				
Lincoln County				

WEST VIRGINIA—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Logan County				
Marion County				
Mason County				
McDowell County				
Mercer County				
Mineral County				
Mingo County				
Monongalia County				
Monroe County				
Morgan County				
Nicholas County				
Pendleton County				
Pleasants County				
Pocahontas County				
Preston County				
Raleigh County				
Randolph County				
Ritchie County				
Roane County				
Summers County				
Taylor County				
Tucker County				
Tyler County				
Upshur County				
Webster County				
Wetzel County				
Wirt County				
Wyoming County				

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.
[2] Early Action Compact Area, effective date deferred until September 30, 2005.

■ 51. In § 81.350, the table entitled ''Wisconsin—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Door County, WI:				
Door County		Nonattainment		Subpart 1.
Kewaunee County, WI:				
Kewaunee County		Nonattainment		Subpart 1.
Manitowoc County, WI:				
Manitowoc County		Nonattainment		Subpart 1.
Milwaukee-Racine, WI:				
Kenosha County		Nonattainment		Subpart 2/Moderate.
Milwaukee County		Nonattainment		Subpart 2/Moderate.
Ozaukee County		Nonattainment		Subpart 2/Moderate.
Racine County		Nonattainment		Subpart 2/Moderate.
Washington County		Nonattainment		Subpart 2/Moderate.
Waukesha County		Nonattainment		Subpart 2/Moderate.
Sheboygan, WI:				
Sheboygan County		Nonattainment		Subpart 2/Moderate.
Rest of State:				
Adams County		Unclassifiable/Attainment.		
Ashland County		Unclassifiable/Attainment.		
Barron County		Unclassifiable/Attainment.		
Bayfield County		Unclassifiable/Attainment.		
Brown County		Unclassifiable/Attainment.		
Buffalo County		Unclassifiable/Attainment.		
Burnett County		Unclassifiable/Attainment.		
Calumet County		Unclassifiable/Attainment.		
Chippewa County		Unclassifiable/Attainment.		
Clark County		Unclassifiable/Attainment.		

WISCONSIN—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Columbia County		Unclassifiable/Attainment.		
Crawford County		Unclassifiable/Attainment.		
Dane County		Unclassifiable/Attainment.		
Dodge County		Unclassifiable/Attainment.		
Douglas County		Unclassifiable/Attainment.		
Dunn County		Unclassifiable/Attainment.		
Eau Claire County.		Unclassifiable/Attainment.		
Florence County		Unclassifiable/Attainment.		
Fond du Lac County		Unclassifiable/Attainment.		
Forest County		Unclassifiable/Attainment.		
Grant County		Unclassifiable/Attainment.		
Green County		Unclassifiable/Attainment.		
Green Lake County		Unclassifiable/Attainment.		
Iowa County		Unclassifiable/Attainment.		
Iron County		Unclassifiable/Attainment.		
Jackson County		Unclassifiable/Attainment.		
Jefferson County		Unclassifiable/Attainment.		
Juneau County		Unclassifiable/Attainment.		
La Crosse County		Unclassifiable/Attainment.		
Lafayette County		Unclassifiable/Attainment.		
Langlade County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Marathon County		Unclassifiable/Attainment.		
Marinette County		Unclassifiable/Attainment.		
Marquette County		Unclassifiable/Attainment.		
Menominee County		Unclassifiable/Attainment.		
Monroe County		Unclassifiable/Attainment.		
Oconto County		Unclassifiable/Attainment.		
Oneida County		Unclassifiable/Attainment.		
Outagamie County		Unclassifiable/Attainment.		
Pepin County		Unclassifiable/Attainment.		
Pierce County		Unclassifiable/Attainment.		
Polk County		Unclassifiable/Attainment.		
Portage County		Unclassifiable/Attainment.		
Price County		Unclassifiable/Attainment.		
Richland County		Unclassifiable/Attainment.		
Rock County		Unclassifiable/Attainment.		
Rusk County		Unclassifiable/Attainment.		
St. Croix County		Unclassifiable/Attainment.		
Sauk County		Unclassifiable/Attainment.		
Sawyer County		Unclassifiable/Attainment.		
Shawano County		Unclassifiable/Attainment.		
Taylor County		Unclassifiable/Attainment.		
Trempealeau County		Unclassifiable/Attainment.		
Vernon County		Unclassifiable/Attainment.		
Vilas County		Unclassifiable/Attainment.		
Walworth County		Unclassifiable/Attainment.		
Washburn County		Unclassifiable/Attainment.		
Waupaca County		Unclassifiable/Attainment.		
Waushara County		Unclassifiable/Attainment.		
Winnebago County		Unclassifiable/Attainment.		
Wood County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 52. In § 81.351, the table entitled ''Wyoming—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.351 Wyoming.

* * * * *

WYOMING—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide		Unclassifiable/Attainment.		
Albany County		Unclassifiable/Attainment.		
Big Horn County		Unclassifiable/Attainment.		

WYOMING—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Campbell County		Unclassifiable/Attainment.		
Carbon County		Unclassifiable/Attainment.		
Converse County		Unclassifiable/Attainment.		
Crook County		Unclassifiable/Attainment.		
Fremont County		Unclassifiable/Attainment.		
Goshen County		Unclassifiable/Attainment.		
Hot Springs County		Unclassifiable/Attainment.		
Johnson County		Unclassifiable/Attainment.		
Laramie County		Unclassifiable/Attainment.		
Lincoln County		Unclassifiable/Attainment.		
Natrona County		Unclassifiable/Attainment.		
Niobrara County		Unclassifiable/Attainment.		
Park County		Unclassifiable/Attainment.		
Platte County		Unclassifiable/Attainment.		
Sheridan County		Unclassifiable/Attainment.		
Sublette County		Unclassifiable/Attainment.		
Sweetwater County		Unclassifiable/Attainment.		
Teton County		Unclassifiable/Attainment.		
Uinta County		Unclassifiable/Attainment.		
Washakie County		Unclassifiable/Attainment.		
Weston County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

■ 53. In § 81.352, the table entitled ''American Samoa—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.352 American Samoa.

* * * * *

AMERICAN SAMOA—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

■ 54. In § 81.353, the table entitled ''Guam—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.353 Guam.

* * * * *

GUAM—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide:		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

■ 55. In § 81.354, the table entitled ''Northern Mariana Islands—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.354 Northern Mariana Islands.

* * * * *

NORTHERN MARIANA ISLANDS—OZONE (8-HOUR STANDARD)

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
Whole State		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

■ 56. In § 81.355, the table entitled ''Puerto Rico—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.355 Puerto Rico.

* * * * *

PUERTO RICO—OZONE (8-HOUR STANDARD)

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide	.....	Unclassifiable/Attainment.		
Adjuntas Municipio				
Aguada Municipio				
Aguadilla Municipio				
Aguas Buenas Municipio				
Aibonito Municipio				
Añasco Municipio				
Arecibo Municipio				
Arroyo Municipio				
Barceloneta Municipio				
Barranquitas Municipio				
Bayamón County				
Cabo Rojo Municipio				
Caguas Municipio				
Camuy Municipio				
Canóvanas Municipio				
Carolina Municipio				
Cataño County				
Cayey Municipio				
Ceiba Municipio				
Ciales Municipio				
Cidra Municipio				
Coamo Municipio				
Comerío Municipio				
Corozal Municipio				
Culebra Municipio				
Dorado Municipio				
Fajardo Municipio				
Florida Municipio				
Guánica Municipio				
Guayama Municipio				
Guayanilla Municipio				
Guaynabo County				
Gurabo Municipio				
Hatillo Municipio				
Hormigueros Municipio				
Humacao Municipio				
Isabela Municipio				
Jayuya Municipio				
Juana Díaz Municipio				
Juncos Municipio				
Lajas Municipio				
Lares Municipio				
Las Marías Municipio				
Las Piedras Municipio				
Loíza Municipio				
Luquillo Municipio				
Manatí Municipio				
Maricao Municipio				
Maunabo Municipio				
Mayagüez Municipio				
Moca Municipio				
Morovis Municipio				
Naguabo Municipio				
Naranjito Municipio				
Orocovis Municipio				
Patillas Municipio				
Peñuelas Municipio				
Ponce Municipio				
Quebradillas Municipio				
Rincón Municipio				
Río Grande Municipio				
Sabana Grande Municipio				
Salinas Municipio				
San Germán Municipio				
San Juan Municipio				

PUERTO RICO—OZONE (8-HOUR STANDARD)—Continued

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
San Lorenzo Municipio San Sebastián Municipio Santa Isabel Municipio Toa Alta Municipio Toa Baja County Trujillo Alto Municipio Utuado Municipio Vega Alta Municipio Vega Baja Municipio Vieques Municipio Villalba Municipio Yabucoa Municipio Yauco Municipio				

[1] This date is June 15, 2004, unless otherwise noted.

■ 57. In § 81.356, the table entitled ''Virgin Islands—Ozone (8-Hour Standard)'' is added to read as follows:

§ 81.356 Virgin Islands.

* * * * *

VIRGIN ISLANDS—OZONE (8-HOUR STANDARD)

Designated area	Designation		Category/classification	
	Date [1]	Type	Date [1]	Type
Statewide St. Croix St. John St. Thomas		Unclassifiable/Attainment.		

[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. 04–9152 Filed 4–29–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50, 51 and 81

[OAR 2003–0079, FRL–7651–7]

RIN 2060–AJ99

Final Rule To Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this document, EPA is taking final action on key elements of the program to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). This final rule addresses the following topics: classifications for the 8-hour NAAQS; revocation of the 1-hour NAAQS (*i.e.*, when the 1-hour NAAQS will no longer apply); how anti-backsliding principles will ensure continued progress toward attainment of the 8-hour ozone NAAQS; attainment dates; and the timing of emissions reductions needed for attainment. We are issuing this rule so that States and Tribes will know how we plan to classify areas and transition from implementation of the 1-hour NAAQS to implementation of the 8-hour NAAQS. The intended effect of the rule is to provide certainty to States and Tribes regarding classifications for the 8-hour NAAQS and their continued obligations with respect to existing requirements. This document is Phase 1 of the program to implement the 8-hour ozone NAAQS. We plan to issue a second rule, Phase 2, within the next several months which will address the remaining 8-hour implementation issues, *e.g.*, requirements for reasonable further progress (RFP), requirements for modeling and attainment demonstrations, and requirements for reasonably available control measures (RACM) and reasonably available control technology (RACT).

DATES: Effective Date: This rule is effective on June 15, 2004.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. OAR–2003–0079. 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 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 EPA Docket Center (Air 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 variety of earlier materials regarding implementation of the 8-hour ozone NAAQS on the Web site: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.*

FOR FURTHER INFORMATION CONTACT: Mr. John Silvasi, Office of Air Quality