

PUERTO RICO—2008 8-HOUR OZONE NAAQS  
[Primary and secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
All of Puerto Rico AQCR 244 .....	.....	Unclassifiable/Attainment.		

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified.  
<sup>2</sup> This date is July 20, 2012, unless otherwise noted.

■ 57. Section 81.356 is amended as follows:  
■ a. By revising the table heading for “Virgin Islands—Ozone (8-Hour Standard)” to read “Virgin Islands—

1997 8-Hour Ozone NAAQS (Primary and Secondary)”  
■ b. By adding a new table entitled “Virgin Islands—2008 8-Hour Ozone NAAQS (Primary and Secondary)” following the newly designated table

“Virgin Islands—1997 8-Hour Ozone NAAQS (Primary and Secondary)” to read as follows:

**§ 81.356 Virgin Islands.**  
\* \* \* \* \*

VIRGIN ISLANDS—2008 8-HOUR OZONE NAAQS  
[Primary and secondary]

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
All of Virgin Islands AQCR 247: <sup>2</sup> .....	.....	Unclassifiable/Attainment.		

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.  
<sup>2</sup> Includes any Indian country in each county or area, unless otherwise specified.

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 50 and 51**

[EPA–HQ–OAR–2010–0885, FRL–9667–9]  
RIN 2060–AR32

**Implementation of the 2008 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach, Attainment Deadlines and Revocation of the 1997 Ozone Standards for Transportation Conformity Purposes**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** In this final rule, the EPA is establishing the air quality thresholds that define the classifications assigned to all nonattainment areas for the 2008 ozone national ambient air quality standards (NAAQS) (the “2008 ozone NAAQS”) which were promulgated on March 12, 2008. The EPA is also granting reclassification for selected nonattainment areas that voluntarily reclassified under the 1997 ozone NAAQS. This rule also establishes December 31 of each relevant calendar year as the attainment date for all nonattainment area classification categories. Finally, this rule provides for

the revocation of the 1997 ozone NAAQS for transportation conformity purposes to occur 1 year after the effective date of designations for the 2008 ozone NAAQS.

**DATES:** This rule is effective on July 20, 2012.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2010–0885. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West Building, Room 3334, 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 Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Dr. Karl Pepple, Office of Air Quality Planning and

Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711, phone number (919) 541–2683, or by email at [pepple.karl@epa.gov](mailto:pepple.karl@epa.gov); or Mr. Butch Stackhouse, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency (C539–01), Research Triangle Park, NC 27711, phone number (919) 541–5208, or by email at [stackhouse.butch@epa.gov](mailto:stackhouse.butch@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected directly by this final rule include state, local, and tribal governments. Entities potentially affected indirectly by the final rule include owners and operators of sources of emissions [volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>)] that contribute to ground-level ozone concentrations.

*B. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this notice will be posted at <http://www.epa.gov/air/ozonepollution/actions.html#impl> under “recent actions.”

*C. How is this notice organized?*

The information presented in this notice is organized as follows:

- I. General Information
  - A. Does this action apply to me?
  - B. Where can I get a copy of this document and other related information?
  - C. How is this notice organized?
- II. Background
- III. What are the final classification thresholds for nonattainment areas for the 2008 ozone NAAQS?
  - A. Summary of Proposed Classification Thresholds
  - B. Brief Summary of Comments on the Proposed Rule
  - C. Final Classification Thresholds
- IV. How will areas that were voluntarily reclassified under the 1997 ozone NAAQS be addressed?
  - A. Summary of Proposed Reclassification of Selected Areas
  - B. Brief Summary of Comments Received
  - C. Final Action
- V. What are the attainment deadlines for each classification?
  - A. Summary of Proposed Attainment Deadlines
  - B. Brief Summary of Comments Received
  - C. Final Action
- VI. When is the EPA revoking the 1997 ozone NAAQS for transportation conformity purposes?
  - A. Summary of Proposal
  - B. Final Date for Revoking the 1997 Ozone NAAQS for Transportation Conformity Purposes
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
  - J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - K. Congressional Review Act
- VIII. Statutory Authority
- List of Subjects

## II. Background

On March 27, 2008,<sup>1</sup> the EPA published revisions to both the primary

<sup>1</sup> See 73 FR 16436. The secondary ozone standard, designed to protect public welfare, was set at the same level and with the same averaging time as the primary standard. Since the primary and secondary standards are identical, we refer to them, both individually and together, as the “2008 ozone standard” (or, alternatively, the “2008 ozone NAAQS”) throughout this preamble. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix I.

and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years). On July 16, 2009, the EPA announced that it would initiate a rulemaking to reconsider the NAAQS for various reasons, including the fact that the 0.075 ppm level fell outside of the range recommended by the Clean Air Scientific Advisory Committee. The EPA proposed reconsideration of the NAAQS on January 6, 2010. However, the EPA has not taken final action on the proposed reconsideration; thus, the current NAAQS for ozone remains at 0.075 ppm, as established in 2008. The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but is set at a more protective level.

The EPA deferred initial designation of areas for the 2008 ozone NAAQS until March 12, 2011, pending the NAAQS reconsideration.<sup>2</sup> See 75 FR 2936, January 19, 2010. After the March 12, 2011, designation deadline passed, WildEarth Guardians and Elizabeth Crowe (WildEarth Guardians) filed a lawsuit seeking to compel the EPA to take action to designate areas for the 2008 ozone NAAQS. *WildEarth Guardians and Elizabeth Crowe v. Jackson* (D. Ariz. 11–CV–01661). The EPA and WildEarth Guardians settled the case by entering into a consent decree that requires the EPA Administrator to sign a final rule designating areas for the 2008 ozone NAAQS by May 31, 2012. In September 2011, the EPA reinitiated efforts<sup>3</sup> to designate areas for the 2008 ozone NAAQS, and notified states of the EPA’s preliminary designation decisions on or about December 9, 2011.<sup>4</sup> On February 14, 2012, the EPA proposed this rulemaking to address the classifications and attainment deadlines that apply to the areas that are designated as nonattainment for the 2008 ozone NAAQS. See 77 FR 8197. The public comment period for this rule ran to March 15, 2012. The EPA received 41 comments on the Notice of Proposed Rulemaking. This document discusses the comments received and how they were considered by the EPA in general

<sup>2</sup> The 2008 ozone NAAQS were promulgated on March 12, 2008. The presumptive 2-year designation requirement found in CAA § 107(d)(1)(B) required designations for areas by March 12, 2010. The EPA invoked the additional year for designations as allowed under CAA § 107(d)(1)(B) because we determined that due to the reconsideration there was insufficient information to designate areas.

<sup>3</sup> <http://www.epa.gov/airquality/ozonepollution/pdfs/OzoneMemo9-22-11.pdf>.

<sup>4</sup> <http://www.epa.gov/airquality/ozonepollution/designations/2008standards/state.htm>.

terms. The Response to Comments document provides more detailed responses to the comments received. The public comments received on this rulemaking and the EPA’s Response to Comments document are posted in the docket at [www.regulations.gov](http://www.regulations.gov).

We are taking four actions in this final rule: (1) Establishing the air quality thresholds that define each of the five Clean Air Act (CAA) classifications for areas designated nonattainment for the 2008 ozone NAAQS; (2) establishing the attainment deadline associated with each classification; (3) granting reclassification for selected nonattainment areas that voluntarily reclassified under the 1997 ozone NAAQS; and (4) revoking the 1997 ozone NAAQS for purposes of transportation conformity one year after the effective date of the designations for the 2008 ozone NAAQS.

First, we are establishing the air quality thresholds for classification categories that are assigned to all areas designated nonattainment for the 2008 ozone NAAQS according to the “percent-above-the-standard” methodology. In accordance with CAA section 181(a)(1), each area designated as nonattainment for the 2008 ozone NAAQS will be classified by operation of law at the same time as the area is designated by the EPA. Under subpart 2 of part D of title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area’s classification. In 1990, Congress amended part D of title I of the CAA by adding several new subparts, including subpart 2, which specifies implementation requirements for ozone nonattainment areas. For areas classified under subpart 2, these requirements apply in addition to the general State Implementation Plan (SIP) planning requirements applicable to all nonattainment areas under subpart 1 of part D. Under subpart 2, ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area’s “design value,” which represents air quality in the area for the most recent 3 years).<sup>5</sup> The possible classifications are Marginal, Moderate, Serious, Severe, and Extreme. Nonattainment areas with a “lower” classification have ozone levels that are closer to the standard than areas with a “higher” classification.

<sup>5</sup> The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual 4th highest daily maximum 8-hour average ozone concentration. See 40 CFR Part 50, Appendix I.

Areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For instance, among other things, for a Marginal area a state is required to adopt an emissions statement rule for stationary sources, submit a baseline emissions inventory, and implement a nonattainment area preconstruction permit program; however, states are not required to prepare an attainment demonstration and associated contingency measures for Marginal areas. For a Moderate area, a state needs to comply with the Marginal area requirements plus certain other requirements, including the requirement to submit a demonstration that the area will attain in 6 years, the requirement to adopt and implement certain emissions controls, such as reasonably available control technology, a basic vehicle inspection and maintenance program if the area meets the applicable population threshold, and provisions for greater emissions offsets for new or modified sources under the state's new source review (NSR) program. Each higher classification similarly requires emissions controls and stricter NSR offset requirements in addition to those required for the lower classifications. In addition, under the higher classifications, smaller sources are considered "major sources" for permitting and other requirements.

Second, the EPA is setting the attainment date as the number of years specified in Table 1 in section 181(a) from December 31, 2012. Because the attainment dates established in Table 1 have all passed and application of those dates would produce an absurd result, the EPA must reasonably interpret Table 1 to establish attainment dates for the 2008 ozone NAAQS. We believe the approach we are adopting is consistent with the intent of Congress at the time Table 1 was enacted as part of the CAA Amendments of 1990.

Third, the EPA is addressing situations where states have voluntarily requested reclassifications for areas under the 1997 ozone NAAQS. Six areas in California and one area in Texas were voluntarily reclassified at the request of the states for the 1997 ozone NAAQS. These areas have initial classifications for the 2008 ozone NAAQS under the percent-above-the-standard approach we are promulgating that are higher than their classifications under the 1997 NAAQS. In some cases, this would result in these areas being required to attain the more stringent 2008 ozone NAAQS prior to the deadline associated with the area's classification for the

1997 ozone NAAQS. The EPA proposed to interpret the voluntary reclassification requests for the 1997 ozone NAAQS for such areas to also apply for the more stringent 2008 ozone NAAQS unless the state were to expressly request otherwise. Texas requested that the voluntary reclassification for the 1997 NAAQS for the Houston area not apply for the 2008 NAAQS. California commented that it supports the approach of applying its requests for voluntary reclassification for the six areas for the 1997 NAAQS to the 2008 ozone NAAQS. The EPA is finalizing the voluntary reclassifications for the six California areas for the 2008 ozone NAAQS.

Fourth, in this rulemaking, the EPA is revoking the 1997 primary and secondary ozone NAAQS for transportation conformity purposes only.<sup>6</sup> The revocation of the 1997 ozone NAAQS for this limited purpose will occur 1 year after the effective date of the initial area designation for each area for the 2008 ozone NAAQS. This approach results in only one ozone NAAQS—the more protective 2008 ozone NAAQS—applying for purposes of transportation conformity, after the end of the 1-year transportation conformity grace period that applies to newly designated nonattainment areas. See CAA section 176(c)(6). In the absence of this final action, areas currently in nonattainment or maintenance for the 1997 ozone NAAQS that are designated nonattainment for the 2008 ozone NAAQS would be required to implement the transportation conformity program for both the 1997 and 2008 ozone NAAQS concurrently. The EPA intends to address potential revocation of the 1997 ozone NAAQS for all other purposes in a future, separate rulemaking.

### III. What are the final classification thresholds for nonattainment areas for the 2008 ozone NAAQS?

#### A. Summary of Proposed Classification Thresholds

The subpart 2 classification table in CAA section 181(a)(1) is based on 1-hour ozone nonattainment area design values (DVs) (i.e., beginning at a level of 0.121 ppm) because it was designed for implementation of the 0.12 ppm 1-hour standard, which was the effective ozone standard when Congress added the table to the CAA in 1990. Because the table

is based on DVs for a 0.12 ppm 1-hour standard, the EPA recognized that it did not make sense to apply the thresholds listed in the table for implementing an 8-hour form of the ozone standard, first established in 1997. See 69 FR at 23998. We adopted by regulation a modified version of the subpart 2 classification table for the 1997 8-hour ozone standard which contains 8-hour DV thresholds for each classification, rather than the statutory 1-hour DV thresholds. 40 CFR 51.903(a). We translated the classification thresholds in the subpart 2 classification table from 1-hour DVs to 8-hour DVs based on the percentage by which each classification threshold in the table exceeds the 1-hour ozone NAAQS. We noted that these percentages, as established by Congress in 1990, set the classification thresholds at certain percentages or fractions above the level of the standard.<sup>7</sup> See 69 FR at 23957. We refer to this method as the "percent-above-the-standard" method. We proposed to take the same approach for the 2008 ozone NAAQS. After analyzing various alternative options, we proposed to use the same "percent-above-the-standard" methodology as was used for the 1997 ozone NAAQS<sup>8</sup> modified to account for the new level of 0.075 ppm as compared to the level of 0.08 ppm used to establish the classification table for the 1997 ozone NAAQS. See 77 FR at 8201–02.

The proposed percent-above-the-standard method is a simple and straightforward method for establishing classification thresholds that is based on principles inherent in the subpart 2 classification table itself. The principles include the following:

- Areas are grouped by the severity of their air quality problem as characterized by the degree of nonattainment based on their DV.
- Classification would occur "by operation of law" without relying on the EPA exercising discretion for individual situations (prior to any application of the 5 percent adjustment provision under section 181(a)(4) which may occur in the 90-day period following initial designations and classifications). See section III.C of this rule for additional details on how the EPA intends to address previous requests for

<sup>7</sup> The upper thresholds of the Marginal, Moderate, Serious, and Severe classifications are precise percentages or fractions above the level of the standard, namely 15 percent (3/20ths more than the standard), 33.33 percent (one-third more than the standard), 50 percent (one-half more than the standard), and 133.3 percent (one and one-third more than the standard).

<sup>8</sup> Background Information Document: Additional Options Considered for Classification of Nonattainment Areas under the Proposed 2008 Ozone NAAQS. January 2012.

<sup>6</sup> When the EPA revises a NAAQS, the prior NAAQS is not automatically revoked. Accordingly, both the 1997 ozone NAAQS and the more stringent 2008 ozone NAAQS are active standards unless and until the EPA takes action to revoke the previous 1997 standard.

voluntary reclassification for the 1997 ozone NAAQS.

- Classification thresholds are derived using the same percentages above the standard that Congress used when promulgating Table 1 in section 181(a) for purposes of the 1-hour ozone standard, and reflect reasonable attainment periods for most areas that fall into the various classifications.

*B. Brief Summary of Comments on the Proposed Rule*

The EPA received several comments on the percent-above-the-standard methodology. Most of the commenters supported the adoption of this approach, stating that it was consistent with the CAA as well as the methodology used in the implementation of the 1997 ozone NAAQS. Those opposing this option did so for a number of reasons, including concerns that: It puts too many areas in the “Marginal” category; the outcome of the approach does not properly address

the role of transport in the ability of downwind nonattainment areas to attain by the Marginal or Moderate attainment date; and a delay in progress will result from Marginal areas not attaining by the specified date in 2015.

Other commenters that did not directly support or oppose the use of the percent-above-the-standard methodology suggested that the EPA should have considered other options such as the use of subpart 1 for classifying areas. These comments, and the EPA’s responses, are discussed in more detail in the Response to Comments document in the docket.

*C. Final Classification Thresholds*

In this section, we describe the EPA’s methodology for establishing final classification thresholds for purposes of classifying ozone nonattainment areas with respect to the 2008 ozone NAAQS as well as the basis for the decision. After considering the comments, the EPA is finalizing the percent-above-the-

standard methodology as proposed. Using this approach for the 2008 ozone NAAQS, the classification thresholds listed for the 1-hour NAAQS in the subpart 2 classification table are translated into a corresponding set of thresholds for the 2008 8-hour NAAQS by setting threshold DVs in the new table at the same percentages above the 2008 ozone NAAQS as the DV levels in the subpart 2 classification table are above the 1-hour ozone NAAQS. For example, the threshold separating the Marginal and Moderate classifications in the subpart 2 classification table (0.138 ppm) is 15 percent above the 1-hour ozone NAAQS (0.12 ppm). Thus, under this approach, the threshold separating the Marginal and Moderate classifications for the 2008 ozone NAAQS is 0.075 ppm plus 15 percent, or 0.086 ppm. Table 1, below, depicts this translation for all classifications as they apply for the 2008 ozone NAAQS.

TABLE 1—SUBPART 2 1-HOUR OZONE DESIGN VALUE CLASSIFICATION TABLE TRANSLATION TO 8-HOUR DESIGN VALUES FOR THE 2008 OZONE NAAQS OF 0.075 PPM

Area classification		1-hour design value (ppm)	Percent above 1-hour ozone NAAQS	8-hr ozone design value (ppm)
Marginal .....	From .....	0.121	0.833	0.076
	up to <sup>1</sup> .....	0.138	15.000	0.086
Moderate .....	From .....	0.138	15.000	0.086
	up to <sup>1</sup> .....	0.160	33.333	0.100
Serious .....	From .....	0.160	33.333	0.100
	up to <sup>1</sup> .....	0.180	50.000	0.113
Severe-15 .....	From .....	0.180	50.000	0.113
	up to <sup>1</sup> .....	0.190	58.333	0.119
Severe-17 .....	From .....	0.190	58.333	0.119
	up to <sup>1</sup> .....	0.280	133.333	0.175
Extreme .....	equal to or above .....	0.280	133.333	0.175

**Note 1:** But not including.

In conjunction with this final rule, the EPA is also finalizing initial nonattainment area designations for 45 areas with ambient ozone concentrations exceeding the 2008 ozone NAAQS.<sup>9</sup> The 45 nonattainment

areas are distributed in each classification category as shown in Table 2. As described further in section IV.A of this rule, six areas are being voluntarily reclassified to a higher classification as part of this rule.

Specifically, the areas listed in Table 3 will receive higher classifications based on their voluntary reclassification requests for the 1997 ozone NAAQS. These higher classifications are reflected in Table 2.

TABLE 2—NUMBER OF NONATTAINMENT AREAS IN EACH CLASSIFICATION CATEGORY UNDER THE 2008 OZONE NAAQS<sup>1</sup>

Classification	Number of hypothetical areas estimated in the proposal	Actual number of areas
Marginal .....	43	36
Moderate .....	6	3
Serious .....	3	2
Severe .....	0	3
Extreme .....	0	2

<sup>9</sup>The EPA is also intending to designate as nonattainment a 46th area based on a monitor in the Chicago, IL area that is violating the 2008

NAAQS based on final 2009–2011 data. The EPA intends to complete that action by May 31, 2012.

We anticipate that the Chicago nonattainment area will be classified Marginal.

TABLE 2—NUMBER OF NONATTAINMENT AREAS IN EACH CLASSIFICATION CATEGORY UNDER THE 2008 OZONE NAAQS<sup>1</sup>—Continued

Classification	Number of hypothetical areas estimated in the proposal	Actual number of areas
Total .....	52	46

**Note 1:** The EPA relied on air quality data from 2008–2010 to develop the hypothetical nonattainment areas for purposes of the proposed rule. Several areas, including the Chicago area, certified their 2011 air quality data early, which allowed the EPA to consider that data for purposes of final designations. This table includes the Chicago nonattainment area in the total number of areas.

The EPA is finalizing this approach because the percent-above-the-standard methodology reflects the same approach codified in the CAA, as amended in 1990. It also results in the majority of areas receiving a classification with an attainment date that we believe the areas can meet. The EPA performed an analysis that indicates that the majority of areas classified as Marginal will be able to attain the 2008 ozone NAAQS within 3 years of designation (i.e., in 2015) due to reductions of ozone precursors resulting from a number of federal and state emission reduction programs that have already been adopted.<sup>10</sup> Such programs include more stringent emission standards for onroad and nonroad vehicles and equipment (with associated fleet turnover), and regional reductions in power plant emissions to address interstate transport.<sup>11</sup> For areas classified Moderate and above that are required to develop attainment demonstrations and adopt reasonably available control measures, it is unlikely that already adopted federal and existing state measures will be sufficient to bring the areas into attainment. The EPA did not attempt to forecast additional federal, regional, state or local control measures that may be implemented prior to the relevant attainment dates in 2018 that might help these areas attain the NAAQS. However, we note that the federal and regional programs already in place, in conjunction with others that may be adopted in the next several years, such as maximum achievable control technology standards for boilers, will help these areas make progress toward attainment. In addition, the CAA requires these areas to meet reasonable progress goals out to their attainment date and also requires these areas to evaluate what reasonably available control measures are available in order

<sup>10</sup> Technical note to docket # EPA–HQ–OAR–2010–0885, February 2012. “The Hypothetical Nonattainment Area Projections of 2008–2010 Design Values to 2015.”

<sup>11</sup> Federal Implementation Plans: Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals. August 8, 2011; 76 FR 48208.

to attain as expeditiously as practicable. For these reasons, we anticipate that these areas will be able to attain the 2008 ozone NAAQS by the attainment date for their classification. We note, as provided further below, several areas with the most persistent ozone problems are most likely not to attain by the attainment date associated with their classification by operation of law, and are being voluntarily reclassified to a higher classification in this final rule.

#### IV. How will areas that were voluntarily reclassified under the 1997 ozone NAAQS be addressed?

##### A. Summary of Proposed Reclassification of Selected Areas

CAA section 181(b)(3) provides that a state may voluntarily request that the EPA reclassify a nonattainment area within the state to a higher classification. The EPA has no discretion to deny such requests. Once an area is reclassified to a higher classification, it becomes subject to the associated additional planning and control requirements for that higher classification as well and must attain the standard no later than the later maximum attainment date for that classification.

There are seven areas for which states requested a voluntary reclassification with respect to the 1997 ozone NAAQS. The EPA has granted voluntary reclassification requests for six of these areas, and is in the process of completing the request for one area.<sup>12</sup> These areas are initially classified for the 2008 ozone NAAQS with a lower classification than the areas have for the 1997 ozone NAAQS. Moreover, the maximum attainment date for the 2008

<sup>12</sup> Ventura County, CA was reclassified from Moderate to Serious (Approved 05/20/2008, 73 FR Page 29073, Effective: 06/19/2008). Houston-Galveston-Brazoria, TX was reclassified from Moderate to Severe-15 (Approved 10/01/2008, 73 FR Page 56983, Effective: 10/31/2008). Reclassification of the Los Angeles-South Coast, San Joaquin Valley, Riverside County, and Sacramento Metro areas (May 5, 2010, 75 FR 24409) became effective June 4, 2010. The EPA is in the process of approving the requested voluntary reclassification of West Mojave Desert, CA from Moderate to Severe.

ozone NAAQS based on that lower classification would be before the maximum attainment date for the area for the less stringent 1997 ozone NAAQS. The EPA proposed to interpret the voluntary reclassification requests for the 1997 ozone NAAQS for such areas also to apply for the more stringent 2008 ozone NAAQS unless the state were to expressly request otherwise. Based on discussions with affected areas, we believed it was reasonable to expect that in most instances, where a state requested a voluntary reclassification under the less stringent 1997 ozone NAAQS, it would make the same request for the 2008 ozone NAAQS. The EPA proposed this approach in order to minimize burden on states and to address the concern that some areas might have an earlier attainment date for the more stringent 2008 ozone standard. Moreover, this approach would obviate the need to process separate voluntary reclassification requests for the 2008 NAAQS which might have the effect of delaying certain actions while an area's classification was being modified.

##### B. Brief Summary of Comments Received

The EPA received several comments on the application of the voluntary reclassification requests for the 1997 ozone NAAQS to the more stringent 2008 ozone NAAQS. Supporters of the proposal included the affected state and local air quality management agencies in California. Almost all of the commenters supporting this approach indicated that an area that needed to request more time to attain the 1997 ozone NAAQS would likely need additional time to meet the more stringent 2008 ozone NAAQS. The State of Texas indicated that it did not want the voluntary reclassification request for the Houston area for the 1997 ozone NAAQS to be interpreted to also apply for the 2008 ozone NAAQS. One commenter questioned the authority of the EPA to apply the reclassification request for an area under the 1997 ozone NAAQS to the area's classification

under the 2008 ozone NAAQS. These comments, and the EPA's responses, are discussed in more detail in the Response to Comments document in the docket.

*C. Final Action*

Once the initial area designations and classifications for the 2008 ozone NAAQS are completed, the CAA provides three mechanisms for addressing nonattainment areas that may not be attaining or are not able to attain by the attainment date provided for their classification. First, section 181(a)(4) provides that within 90 days of the effective date of designation and classification, the Administrator may exercise discretion to reclassify an area to a higher classification if its DV is within 5 percent of the DV range of the higher classification.<sup>13</sup> Any state interested in taking advantage of this flexibility should submit a request to the EPA in sufficient time for the Administrator to make a determination within the 90 days provided.

The second mechanism, as provided in section 181(b)(3), allows a state to voluntarily request at any time that the EPA reclassify the area to a higher

classification. The EPA has no discretion to deny such requests. Once an area is reclassified to a higher classification, it becomes subject to the associated additional planning and control requirements for that higher classification and must attain the standard no later than the later maximum attainment date for that classification. Any state may request a voluntary reclassification under the 2008 ozone NAAQS at any time prior to the area's attainment deadline.

The third mechanism, as provided in section 181(b)(2), requires that an area be reclassified to the next higher classification (i.e., "bumped-up") if the EPA determines that the area has failed to attain the standard by the area's attainment date and does not qualify for a 1-year attainment date extension as allowed under CAA section 181(b)(2).<sup>14</sup> Areas classified as Severe are not reclassified to Extreme, as provided under CAA section 181(b)(2)(A), but instead are subject to other requirements as provided in section 181(b)(4).

The areas for which states requested a voluntary reclassification would initially have been classified with a lower classification with an earlier

maximum attainment date for the more stringent 2008 NAAQS than the area had for the 1997 NAAQS. At the time the EPA issued the proposed rule, we believed it likely that these areas would as a result have requested a similar reclassification for the 2008 NAAQS. The EPA is obligated to approve such voluntary reclassification requests if made. During the comment period, the State of California confirmed that it wished for the EPA to interpret its voluntary reclassification requests for areas within the state for the 1997 ozone NAAQS to also apply for the 2008 ozone NAAQS. The State of Texas indicated that it did not wish for the EPA to interpret its reclassification request for the 1997 ozone NAAQS for the Houston area as applying to the 2008 NAAQS. Therefore, we are treating the prior requests made for the nonattainment areas in California listed in Table 3 as requests that also apply to the 2008 ozone NAAQS. This final rule reduces the burden on the State of California and the affected air management districts by obviating the need to go through a separate process to request bump-up for the 2008 NAAQS.

TABLE 3—AREAS RECEIVING VOLUNTARY RECLASSIFICATION UNDER THE 2008 OZONE NAAQS

Nonattainment area	State	Initial 2008 ozone NAAQS classification	Voluntary reclassification under 2008 ozone NAAQS
Los Angeles-South Coast Air Basin .....	CA .....	Serious .....	Extreme.
San Joaquin Valley .....	CA .....	Serious .....	Extreme.
Riverside County (Coachella Valley) .....	CA .....	Moderate .....	Severe.
Sacramento Metro .....	CA .....	Serious .....	Severe.
Ventura County .....	CA .....	Moderate .....	Serious.
Western Mojave .....	CA .....	Moderate .....	Severe.

**V. What are the attainment deadlines for each classification?**

*A. Summary of Proposed Attainment Deadlines*

The CAA provides that the primary NAAQS attainment dates for areas subject to subpart 2 must be as expeditious as practicable but no later than the deadlines provided in the subpart 2 classification table in CAA section 181(a)(1). The deadlines for attainment in the subpart 2 classification table are specified in terms of a certain number of years from the date of enactment of the 1990 Amendments to the CAA (i.e.,

November 15, 1990). For instance, the attainment date for Moderate areas is expressed as "6 years after November 15, 1990." Because these time periods are clearly inappropriate for a new ozone standard promulgated in 2008, we proposed to interpret the attainment deadlines in the subpart 2 classification table as they would apply to the 2008 ozone NAAQS.

The EPA proposed two options for establishing the maximum attainment dates for areas in each nonattainment classification. Under the first option, the attainment dates would be the precise number of years specified in Table 1 with such time period running from the

effective date of designation. Under the second option, the attainment dates would be December 31 of the year that is the specified number of years in Table 1 after the effective date of designation.

The first option, which was the same approach we took for the 1997 ozone NAAQS, would interpret "year" in the subpart 2 classification table to mean consecutive 365-day periods,<sup>15</sup> and we would substitute "after the effective date of designation" for the CAA's "after November 15, 1990" language in the subpart 2 classification table. Under this approach, the attainment deadline would fall a precise number of years after the effective date of designation.

<sup>13</sup> This CAA provision also provides the same authority for reclassifying areas to a lower classification. Since the vast majority of nonattainment areas for the 2008 NAAQS are classified Marginal, very few areas are eligible to request a reclassification to a lower classification. We anticipate that no states will request a

reclassification to a lower classification because our analyses indicate that these areas will need longer than 3 years to attain the NAAQS and additional controls will be necessary for attainment.

<sup>14</sup> We note that for purposes of the 1997 ozone NAAQS, we promulgated a regulation interpreting CAA section 181(b)(4) for purposes of an 8-hour

ozone NAAQS. 40 CFR 51.907. We anticipate that we will propose a similar regulation for the 2008 ozone standard as part of the proposed implementation rule.

<sup>15</sup> Except in the case of a leap year, where the year would be a rolling 366-day period.

For the second option, the attainment date would be specified as a certain number of years from the end of the calendar year in which an area's nonattainment designation is effective (i.e., from December 31, 2012). The EPA explained in its proposal that where the designation is effective late in the ozone season, as we expected to be the case for the 2008 ozone NAAQS, the first option had the effect of providing one less complete ozone season for areas to improve their air quality than was accorded areas under the CAA as amended in 1990. We described that under the first option, a Marginal area effectively would have only two full ozone seasons following the effective date of designation to improve its air quality in order to attain by its attainment date. This is because attainment is based on three full ozone seasons of air quality data; thus in order to attain "by" its attainment date, the area could not consider air quality for an ozone season during which the attainment date falls.

We explained our belief that the second option is consistent with the time periods provided for attainment of the 1-hour ozone NAAQS at the time the CAA was amended. The CAA Amendments were enacted on November 15, 1990, after the end of the ozone season for virtually all areas, and for the few areas that had year-round ozone seasons, the EPA interpreted the Act to allow consideration of air quality in the attainment year even though the attainment date fell on November 15. Thus, when the CAA was amended in mid-November 1990, 1-hour Marginal areas had three full ozone seasons to achieve any reductions necessary for attainment, and Moderate areas had six full ozone seasons, because the attainment deadline was the anniversary of the enactment of the 1990 CAA (November 15).

#### *B. Brief Summary of Comments Received*

The EPA received numerous comments on the attainment deadlines proposal. A few commenters supported the first option based on what they believed to be a plain reading of the CAA. A number of commenters opposed the first option, because it would not allow air quality data from the attainment year to be used in determining if the area attained the

NAAQS by the deadline. Most of the commenters supported the adoption of the second option believing that it was most consistent with the 1990 CAA Amendments and that it would ensure that at least three full ozone seasons of data following designation (2013–2015) would be used for Marginal areas (and six (2013–2018) for Moderate areas, etc.) to determine attainment with the 2008 ozone NAAQS. Those opposing the second option indicated it would result in further delays in implementing controls in areas required to attain the 2008 ozone NAAQS, and that it arbitrarily endangers human health. These comments, and the EPA's responses, are discussed in more detail in the Response to Comments document in the docket.

#### *C. Final Action*

The EPA is finalizing the second proposed option. Attainment deadlines for the 2008 ozone NAAQS nonattainment areas will be December 31 of the calendar year that is the number of years specified for each classification in Table 1 with the number of years running from 2012. The EPA believes that this approach is appropriate for several reasons. First, we believe it is consistent with the intent of Congress at the time the CAA Amendments of 1990 were enacted. Since ozone seasons for most areas run during the spring, summer and fall,<sup>16</sup> the CAA, as amended in 1990, allowed Marginal areas three full ozone seasons to attain and maintain the NAAQS (and six full ozone seasons for Moderate areas, etc.) after the time that areas were designated and classified by operation of law at the time of enactment of the CAA Amendments. If the attainment date runs from the effective date of designation (i.e., mid-2012), to the extent measures beyond federal measures or state measures that are already in place would be needed for attainment of the 2008 ozone NAAQS by Marginal areas, states would have 18 to 21 months<sup>17</sup> to adopt and implement

such measures no later than the beginning of the 2014 ozone season. This is less time than such areas had for purposes of the 1-hour ozone standard under the CAA as amended in 1990. At that time, states with Marginal areas had over two years to adopt and implement such measures prior to the final ozone season used for purposes of determining attainment.<sup>18</sup> In addition, this approach is consistent with the regulatory provisions specifying how to determine whether an area has attained the 2008 ozone NAAQS, which require an evaluation of monitoring data from 3 consecutive calendar years running from January 1 to December 31 of each year.

Accordingly, areas initially classified as Marginal are required to attain the 2008 ozone NAAQS no later than December 31, 2015, and the EPA will evaluate whether the area attained the NAAQS based on monitored ozone data from 2013–2015. Areas initially classified as Moderate are required to attain the 2008 ozone NAAQS no later than December 31, 2018, and the EPA will evaluate whether the area attained the NAAQS based on monitored ozone data from 2016–2018. Serious, Severe, and Extreme areas are required to attain the 2008 ozone NAAQS by December 31, 2021, 2027 and 2032, respectively. Table 4 summarizes the final attainment deadlines for all classification categories.

states to adopt and implement any additional measures needed for attainment. The ozone season for all areas of Colorado, Northern Texas, Northern Louisiana, Alabama, Mississippi, Georgia, Florida, Tennessee and Kentucky starts in March, which would provide 20 months for areas classified as Marginal in such states to adopt and implement any additional measures needed for attainment. The ozone season for all other areas designated nonattainment for the 2008 NAAQS begins in April, which would provide 21 months for areas classified as Marginal in such states to adopt and implement any additional measures needed for attainment.

<sup>18</sup> The same is true for the higher classifications if the attainment date falls in the middle of the year. For example, under Option 1, Moderate areas would have approximately 4½ years to adopt and implement measures necessary to attain the 2008 ozone NAAQS (i.e., no later than the beginning of the 2016 ozone season, which would be the final ozone season relied on for attainment), whereas at the time of the CAA Amendments of 1990, Moderate areas had approximately 5 years to adopt and implement measures prior to the beginning of the 1996 ozone season, which was the final ozone season considered for determining whether an area attained by the November 1996 Moderate area attainment date.

<sup>16</sup> A few of the most southern areas in the country do have a year-round ozone season. For purposes of the 1-hour NAAQS, the EPA effectively interpreted the November 15 attainment date as the end of the calendar year (i.e., the end of calendar years 1993, 1996, 1999, 2005, 2007 and 2010).

<sup>17</sup> The ozone season for all areas of California, Nevada, Arizona, Southern Texas and Southern Louisiana starts in January, which would provide 18 months for areas classified as Marginal in such

TABLE 4—ATTAINMENT DATES FOR THE 2008 PRIMARY OZONE NAAQS

Classification	Attainment date	Attainment dates for areas designated in 2012
Marginal .....	December 31 of the calendar year 3 years from the date of designation .....	December 31, 2015.
Moderate .....	December 31 of the calendar year 6 years from the date of designation .....	December 31, 2018.
Serious .....	December 31 of the calendar year 9 years from the date of designation .....	December 31, 2021.
Severe .....	December 31 of the calendar year 15 years from the date of designation .....	December 31, 2027.
Extreme .....	December 31 of the calendar year 20 years from the date of designation .....	December 31, 2032.

## VI. When is the EPA revoking the 1997 ozone NAAQS for transportation conformity purposes?

### A. Summary of Proposal

Transportation conformity is required under CAA section 176(c) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit projects 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 NAAQS or interim reductions and milestones. The EPA’s Transportation Conformity Rule (40 CFR 51.390 and Part 93, subpart A) establishes the criteria and procedures for determining whether transportation activities conform to the SIP.

The EPA proposed to revoke the 1997 ozone NAAQS one year after the effective date of designations for the 2008 ozone NAAQS for transportation conformity purposes only. As the EPA described in the proposal, revoking the 1997 ozone NAAQS for transportation conformity purposes would bring certainty to the transportation planning process in ozone nonattainment and maintenance areas. It would also ensure that backsliding does not occur for purposes of transportation conformity as areas designated nonattainment for the 2008 ozone NAAQS will be required to use adequate or approved SIP motor vehicle emissions budgets for the 1997 ozone NAAQS or 1-hour ozone NAAQS, if the area has such SIP budgets for one of these ozone NAAQS, until SIP budgets are found adequate or are approved for the 2008 ozone NAAQS as required by recent court decisions discussed below and as required by CAA 176(c)(1) and by the transportation conformity rule (40 CFR 93.109(c)(2)).<sup>19,20</sup> Specifically, CAA

<sup>19</sup> A motor vehicle emissions budget is that portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the

section 176(c)(1) states, in part, “No metropolitan planning organization designated under section 134 of Title 23 shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title.” Under the EPA’s regulations (40 CFR 93.109(c)(2)), adequate or approved motor vehicle emissions budgets for a prior NAAQS must be used in transportation conformity determinations for a revised NAAQS until such time that budgets for the revised NAAQS are either found adequate or are approved. The EPA is finalizing this limited revocation of the 1997 ozone NAAQS at this time to provide certainty to the transportation planning process. In a subsequent rulemaking the EPA will consider whether to also revoke the 1997 ozone NAAQS on the same timeline for all other purposes.

This approach was the same approach the EPA used to transition from the 1-hour ozone NAAQS to the more stringent 1997 ozone NAAQS. For that transition, our Phase 1 implementation rule for the 1997 ozone NAAQS revoked the 1-hour ozone NAAQS for all purposes one year after the effective date of the initial area designations for the 1997 ozone NAAQS. See 69 FR 23954. The Phase 1 rule also established comprehensive anti-backsliding provisions to ensure that requirements for the 1-hour ozone NAAQS would continue in place as areas transitioned to implementing the more stringent 1997 ozone NAAQS.

NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.

<sup>20</sup> On March 14, 2012, the EPA finalized a revision to the transportation conformity rule, which among other things revised the rule to specifically require that a nonattainment area that has approved or adequate motor vehicle emissions budgets in an applicable implementation plan or implementation plan submission for another NAAQS for the same pollutant must use those budgets in transportation conformity determinations until motor vehicle emissions budgets for the current NAAQS are submitted by the state and found adequate or are approved by the EPA. This revision to the conformity rule was effective on April 13, 2012. (77 FR 14979.)

The revocation of the 1-hour standard and the associated anti-backsliding provisions were the subject of litigation. In its December 2006 decision on that challenge, as modified following rehearing, the Court held with respect to the anti-backsliding approach for transportation conformity that 1-hour motor vehicle emissions budgets must be used where such budgets have been found adequate or approved, as part of 8-hour conformity determinations until 8-hour motor vehicle emissions budgets are available (*South Coast Air Quality Management District v. EPA*, 472 F.3d at 882). In addition, the Court affirmed more broadly that in order for transportation conformity determinations to fulfill the requirements of CAA section 176(c)(1), motor vehicle emissions budgets for a prior NAAQS must be used in transportation conformity determinations under a revised NAAQS until emissions budgets for the revised NAAQS are either found adequate or are approved, but that conformity determinations need not be made for a revoked standard. Therefore, areas designated nonattainment for the 2008 ozone NAAQS that have adequate or approved SIP budgets for either the 1997 ozone NAAQS or the 1-hour ozone NAAQS must continue to use such budgets in transportation conformity determinations until budgets for the 2008 ozone NAAQS are found adequate or are approved.<sup>21</sup>

Similar to our rationale in the Phase 1 rule for implementation of the 1997 ozone NAAQS, we explained at proposal that we believe this approach makes the most sense because it would result in only one ozone NAAQS—the 2008 ozone NAAQS—applying for purposes of transportation conformity, after the end of the 1-year transportation conformity grace period that applies to newly designated nonattainment areas (CAA section 176(c)(6)). If the 1997

<sup>21</sup> Areas without adequate or approved SIP budgets for either the 1997 ozone NAAQS or the 1-hour ozone NAAQS are required to demonstrate conformity using one or both of the interim emissions tests depending on their classification as required by 40 CFR 93.119.



ozone NAAQS were to remain in place after conformity applies for the 2008 ozone NAAQS, metropolitan planning organizations and other state, local, and federal transportation and air quality agencies in areas that are currently nonattainment or maintenance for the 1997 ozone NAAQS and will be designated nonattainment for the 2008 ozone NAAQS would be required to implement the transportation conformity program for both ozone NAAQS concurrently. This could lead to unnecessary complexity for conformity determinations, especially if an area's boundaries for the two ozone NAAQS differ from one another and the same test of conformity cannot be used for both ozone NAAQS. Even where an area's boundaries are unchanged, different analysis years under the conformity rules may be required for each ozone NAAQS. Furthermore, we believe that it is more important to determine conformity for the new 2008 ozone NAAQS that is more protective of health and welfare. Therefore, for transportation conformity purposes, this final rule provides a seamless transition from demonstrating conformity for the 1997 ozone NAAQS to demonstrating conformity for the 2008 ozone NAAQS. Revoking the 1997 ozone NAAQS one year after the effective date of designations for the limited purpose of transportation conformity would leave no gap in conformity's application in any 2008 ozone nonattainment area.

#### *B. Final Date for Revoking the 1997 Ozone NAAQS for Transportation Conformity Purposes*

The EPA received many comments regarding the revocation of the 1997 ozone NAAQS for purposes of transportation conformity. Most of the commenters supported revoking the 1997 ozone NAAQS for transportation conformity purposes one year after the effective date of designations for the 2008 ozone NAAQS, as proposed, because this would minimize the burden on states, and focus efforts on the more stringent 2008 ozone NAAQS. Those opposing this option did so as a result of concerns about backsliding and the legality of revoking the 1997 ozone NAAQS at all. Several other comments were received that were directed at topics such as general conformity and revocation of the 1997 ozone NAAQS for other purposes that will be addressed in a subsequent rule addressing SIP requirements for the 2008 ozone NAAQS. These comments, and the EPA's responses, are discussed in more detail in the Response to Comments document in the docket. After considering the comments and for

the reasons described above, the EPA is finalizing the proposed revocation.

This final rule does not revoke the 1997 ozone NAAQS for purposes other than transportation conformity. A subsequent proposal addressing SIP requirements for the 2008 ozone NAAQS will cover the broader anti-backsliding requirements that might apply if the 1997 standard is revoked for purposes other than transportation conformity.

### **VII. Statutory and Executive Order Reviews**

#### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

#### *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.* Burden is defined at 5 CFR 1320.3(b).

The final Classifications Rule for the 2008 ozone NAAQS establishes the air quality thresholds associated with each classification, which is assigned by operation of law at the time of designation as provided in section 181(a) of the CAA. It also reclassifies six areas in California to a higher classification, consistent with the State of California's previous request to reclassify such areas for the 1997 ozone NAAQS. This rule establishes the attainment date as December 31st of the year that is the number of years specified in Table 1 in CAA section 182(a) running from the year of designation (i.e., 2012). This rule also revokes the 1997 ozone NAAQS for transportation conformity purposes only. This limited revocation will bring certainty to the transportation conformity process consistent with prior court decisions and CAA section 176(c). This rule, in conjunction with another implementation rule we plan to propose in the future, will help states identify planning requirements that apply for purposes of attaining and maintaining the 2008 ozone NAAQS. No new information needs to be collected from the states as a result of this final rule.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare

a regulatory flexibility analysis of any regulation 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 these final rules on small entities, small entity is defined as: (1) A small business as defined in 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.

The CAA requires the EPA to designate areas and provides for nonattainment areas to be classified by operation of law at the time of designation, and allows areas to request reclassification to a higher classification. This rule establishes the thresholds that define these initial classifications and reclassifies some areas, and also establishes the attainment deadline for each classification. The CAA also requires that nonattainment and maintenance areas make transportation conformity determinations. This rule revokes the 1997 ozone NAAQS one year after the effective date of designations so that areas designated nonattainment for the 2008 ozone NAAQS are required to address conformity requirements for only the more protective 2008 ozone NAAQS.

After considering the economic impacts of this final rule on small entities, the EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

#### *D. Unfunded Mandates Reform Act*

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, and tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

#### *E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements to designate nonattainment areas, which are then classified by operation of law, as well as the requirement to grant reclassification requests are imposed by the CAA. Thus, Executive Order 13132 does not apply to these final regulations.

Although this action does not have federalism implications as defined in Executive Order 13132, the EPA recognizes that the adoption in 2008 of the more health-protective ozone standard has triggered CAA requirements for state agencies responsible for managing air quality programs. Under the CAA, achieving these health benefits requires the combined efforts of the federal, state, and local governments, each accomplishing the tasks for which they are best suited. In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA solicited comments on the proposal to this final rule from state and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The final rules do not have a substantial direct effect on one or more Indian tribes under these regulatory revisions, and does not significantly or uniquely affect the communities of Indian tribal governments. Furthermore, these final regulatory revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. These proposed regulatory revisions do not have tribal implications. Thus,

Executive Order 13175 does not apply to this action.

The EPA solicited comment on the proposal for this final action from tribal officials.

#### *G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

These final revisions to the regulations do not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

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

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to

make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The final regulations establish classification thresholds and attainment deadlines for designated nonattainment areas for the 2008 ozone NAAQS, which are designed to protect all segments of the general populations. As such, they do not adversely affect the health or safety of minority or low-income populations and are designed to protect and enhance the health and safety of these and other populations. Today's action also revokes the 1997 ozone NAAQS for transportation conformity purposes only. Such a revocation would not lead to disproportionately high and adverse human health or environmental effects on minority or low-income populations as the CAA requires transportation conformity to apply in any area that is designated nonattainment or maintenance by the EPA. This final rule ensures that transportation conformity is demonstrated in all areas that are designated nonattainment for the more protective 2008 ozone NAAQS.

#### *K. 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 60 days after publication in the **Federal Register**.

### VIII. Statutory Authority

The statutory authority for this action is provided by sections 110; 176; 181; and 301(a)(1) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7506; 42 U.S.C. 7511; 42 U.S.C. 7601(a)(1)).

#### List of Subjects

##### 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

##### 40 CFR Part 51

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: April 30, 2012 .

**Lisa P. Jackson,**  
Administrator.

For the reasons stated in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

### PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for Part 50 continues to read as follows:

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

■ 2. Section 50.10 is amended by adding a paragraph (c) to read as follows:

#### § 50.10 National 8-hour primary and secondary ambient air quality standards for ozone.

\* \* \* \* \*

(c) The 1997 ozone NAAQS set forth in paragraph (a) of this section will no longer apply to an area for transportation conformity purposes 1 year after the effective date of the designation of the area for the 2008 ozone NAAQS pursuant to section 107 of the CAA. The 1997 ozone NAAQS set forth in this section will continue to remain applicable to all areas for all other purposes notwithstanding the promulgation of the 2008 ozone NAAQS under § 50.15 or the designation of areas for the 2008 ozone NAAQS. Area designations and classifications with respect to the 1997 ozone NAAQS are codified in 40 CFR part 81.

### PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 3. The authority citation for Part 51 continues to read as follows:

**Authority:** 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 4. Part 51 is amended by adding subpart AA to read as follows:

#### Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards

Sec.

51.1100 Definitions.

51.1101 Applicability of Part 51.

51.1102 Classification and nonattainment area planning provisions.

51.1103 Application of classification and attainment date provisions in CAA section 181 of subpart 2 to areas subject to § 51.1102(a).

#### Subpart AA—Provisions for Implementation of the 2008 Ozone National Ambient Air Quality Standards

##### § 51.1100 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.

(a) *1-hour NAAQS* means the 1-hour primary and secondary ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) *1997 NAAQS* means the 1997 8-hour primary and secondary ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) *2008 NAAQS* means the 2008 8-hour primary and secondary ozone NAAQS codified at 40 CFR 50.15.

(d) *1-hour ozone design value* is the 1-hour ozone concentration calculated according to 40 CFR part 50, Appendix H and the interpretation methodology issued by the Administrator most recently before the date of the enactment of the CAA Amendments of 1990.

(e) *8-hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, Appendix P.

(f) *CAA* means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2010).

(g) *Attainment area* means, unless otherwise indicated, an area designated as either attainment, unclassifiable, or attainment/unclassifiable.

(h) *Attainment year ozone season* shall mean the ozone season immediately preceding a nonattainment area's maximum attainment date.

(i) *Designation for the 2008 NAAQS* shall mean the effective date of the designation for an area for the 2008 NAAQS.

(j) *Higher classification/lower classification*. For purposes of determining whether a classification is

higher or lower, classifications under subpart 2 of part D of title I of the CAA are ranked from lowest to highest as follows: Marginal; Moderate; Serious; Severe; and Extreme.

(k) *Initially designated* means the first designation that becomes effective for an area for the 2008 NAAQS and does not include a redesignation to attainment or nonattainment for the 2008 NAAQS.

(l) *Maintenance area* means an area that was designated nonattainment for a specific NAAQS and was redesignated to attainment for that NAAQS subject to a maintenance plan as required by CAA section 175A.

(m) *Nitrogen Oxides (NO<sub>x</sub>)* means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(n) *Ozone season* means for each state, the ozone monitoring season as defined in 40 CFR part 58, Appendix D, section 4.1(i) for that state.

##### § 51.1101 Applicability of Part 51.

The provisions in subparts A–X of part 51 apply to areas for purposes of the 2008 NAAQS to the extent they are not inconsistent with the provisions of this subpart.

##### § 51.1102 Classification and nonattainment area planning provisions.

An area designated nonattainment for the 2008 ozone NAAQS will be classified in accordance with CAA section 181, as interpreted in § 51.1103(a), and will be subject to the requirements of subpart 2 of part D of title I of the CAA that apply for that classification.

##### § 51.1103 Application of classification and attainment date provisions in CAA section 181 of subpart 2 to areas subject to § 51.1102.

(a) In accordance with CAA section 181(a)(1), each area designated nonattainment for the 2008 ozone NAAQS shall be classified by operation of law at the time of designation. The classification shall be based on the 8-hour design value for the area at the time of designation, in accordance with Table 1 below. A state may request a higher or lower classification as provided in paragraphs (b) and (c) of this section. For each area classified under this section, the attainment date for the 2008 NAAQS shall be as expeditious as practicable but not later than the date provided in Table 1 as follows:

TABLE 1—CLASSIFICATION FOR 2008 8-HOUR OZONE NAAQS (0.075 PPM) FOR AREAS SUBJECT TO SECTION 51.1102(A)

Area class		8-hour design value (ppm ozone)	Primary standard attainment date (years after designation for 2008 primary NAAQS)
Marginal .....	from .....	0.076	3 years after December 31, 2012.
	up to * .....	0.086	
Moderate .....	from .....	0.086	6 years after December 31, 2012.
	up to * .....	0.100	
Serious .....	from .....	0.100	9 years after December 31, 2012.
	up to * .....	0.113	
Severe-15 .....	from .....	0.113	15 years after December 31, 2012.
	up to * .....	0.119	
Severe-17 .....	from .....	0.119	17 years after December 31, 2012.
	up to * .....	0.175	
Extreme .....	equal to or above .....	0.175	20 years after December 31, 2012.

\* But not including.

(b) A state may request, and the Administrator must approve, a higher classification for any reason in accordance with CAA section 181(b)(3).

(c) A state may request, and the Administrator may in the Administrator's discretion approve, a

higher or lower classification in accordance with CAA section 181(a)(4).

(d) The following nonattainment areas are reclassified for the 2008 ozone NAAQS as follows: Serious—Ventura County, CA; Severe—Los Angeles-San Bernardino Counties (West Mojave

Desert), Riverside County (Coachella Valley), and Sacramento Metro, CA; Extreme—Los Angeles-South Coast Air Basin, and San Joaquin Valley, CA.

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