approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before December 13, 2002.

ADDRESSES: Written comments should be addressed to: Sean Lakeman, EPA Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal is available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Sean Lakeman, 404/562–9043.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman at 404/562–9043, or by electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register.**

Dated: November 1, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–28699 Filed 11–12–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[DC039–2028; MD073–3091; VA090–5060; FRL–7407–6]

Designation of Areas for Air Quality Purposes; District of Columbia, Maryland, Virginia; Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to issue a finding that the Metropolitan Washington, DC serious ozone nonattainment area (hereinafter referred to as the Washington area) has failed to attain the one-hour ozone National Ambient Air Quality Standard (NAAQS) by November 15, 1999, the date set forth in the Clean Air Act (CAA or Act) for serious nonattainment areas. If EPA takes final action to issue this proposed finding of nonattainment, the area would be reclassified as a severe ozone nonattainment area. EPA is proposing to set the dates by which the District of Columbia, the State of Maryland and the Commonwealth of Virginia each must submit revisions to its State Implementation Plan (SIP) that adopt the severe area requirements. Finally, EPA is proposing to adjust the dates by which the area must achieve a nine (9) percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and adjust contingency measure requirements as this relates to the 2002 rate-of-progress requirement.

DATES: Written comments must be received on or before December 13, 2002.

ADDRESSES: Written comments may be mailed to Walter K. Wilkie, Deputy Branch Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *Cripps.Christopher@epa.gov.* Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: The use of ''we,'' ''us,'' or ''our'' in this document refers to EPA.

Table of Contents

I. What Action Are We Proposing?

We are proposing to find that the Washington area has failed to attain the one-hour ozone NAAQS by the November 15, 1999, attainment deadline prescribed under the CAA for serious ozone nonattainment areas. EPA's authority to make this finding is discussed under section 181(b)(2) of the CAA. Section 181(b)(2) explains the process for determining whether an area has attained the one-hour ozone standard and reclassification of the area if necessary. If we issue a final finding of failure to attain, the Washington area will be reclassified by operation of law from serious nonattainment to severe nonattainment.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. For most of

these common air pollutants, there are two types of pollution limits referred to as the primary and secondary standards.[1] The primary standard is based on health effects; the secondary standard is based on environmental effects such as damage to property, plants, and visibility. The CAA requires these standards to be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is currently expressed in two forms which are referred to as the one-hour and eight-hour standards. Table 1 summarizes the ozone standards.

TABLE 1.—SUMMARY OF OZONE STANDARDS

Standard and type	Value (parts per million)	Method of compliance
1-hour—Primary and secondary	0.12	Must not be exceeded, on average, more than one day per year over any 3-year period.
8-hour—Primary and secondary	0.08	The 3-year average of the annual fourth-highest maxima 8-hour average ozone concentrations measured at each monitor within an area.

The 1-hour ozone standard of 0.12 parts per million (ppm) has existed since 1979. On July 18, 1997, EPA adopted the 8-hour ozone standard, which was intended to replace the one-hour standard in areas that were attaining the one-hour standard, (62 FR 38856).[2] The one-hour ozone standard continues to apply to all areas, notwithstanding promulgation of the 8-hour standard (40 CFR 50.9(b)). Both standards are codified at 40 CFR part 50. This document addresses the classification of the Washington area relative to only the one-hour ozone standard.

IV. What Is the Washington Ozone Nonattainment Area?

The Washington area consists of the District of Columbia (the District), a Northern Virginia portion (Arlington, Fairfax, Loudoun, Prince William and Stafford Counties and the cities of Alexandria, Falls Church, Fairfax, Manassas, and Manassas Park), and Calvert, Charles, Frederick, Montgomery, and Prince George's Counties in Maryland.

V. Why Is the Washington Area Currently Classified as a Serious Nonattainment Area?

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the one-hour standard prior to enactment of the 1990 CAA amendments, such as the Washington area, was designated nonattainment by operation of law upon enactment of the amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. The design value for an area, which characterizes the severity of the air quality problem, is represented by the highest design value at any individual ozone monitoring site (*i.e.*, the highest of the fourth highest one-hour daily maximum monitored ozone levels in a given three-year period with complete monitoring data). Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Washington area (which had a design value of 0.165 ppm in 1989), were classified as serious. These nonattainment designations and classifications were codified in 40 CFR part 81 (see 56 FR 56694, November 6, 1991).

TABLE 2.—OZONE NONATTAINMENT CLASSIFICATIONS

Area classification	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

In addition, states containing areas that were classified as serious nonattainment were required to submit SIP revisions to provide for certain controls, to show progress toward attainment, and to provide for attainment as expeditiously as practicable, but not later than November 15, 1999. Serious area SIP requirements are found primarily in section 182(c) of the CAA.

VI. Why Are We Proposing To Reclassify the Washington Area?

A. What Are the Clean Air Act Requirements for Attainment Findings?

Regarding reclassification for failure to attain, section 181(b)(2)(A) of the Act

[1] EPA has established only a primary standard for carbon monoxide.

[2] EPA revoked the one-hour standard in areas that were attaining the standard on June 5, 1998 (63 FR 31051). However, on May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit ruled that the 8-hour ozone standard could not be enforced by EPA. Although the Court of Appeals determined that the 8-hour standard could not be enforced, it did not vacate the standard. hence, the 8-hour standard remained in effect. While appealing this decision to the United States Supreme Court, EPA reinstated the one-hour standard in areas where it had been revoked. (*See* 65 FR 45181, dated July 20, 2000). On February 27, 2001, the Supreme Court upheld the 8-hour standard and instructed EPA to develop an implementation plan for the 8-hour standard that is consistent with the Supreme Court's opinion. *Whitman* v. *American Trucking Assoc. Inc.*, 531 U.S. 457 (2001).

provides that: Within six months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date) whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds have not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) to the higher of—

(i) The next higher classification for the area, or

(ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

Furthermore, section 181(b)(2)(B) of the Act provides that:

> The Administrator shall publish a notice in the **Federal Register** no later than six months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

Therefore, under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the 1-hour ozone standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[3] CAA section 181(b)(2)(A) requires us to base our determination of attainment or finding of failure to attain on the area's design value as of its applicable attainment date, which for the Washington nonattainment area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR 50.9 and Appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.[4] *See* 40 CFR part 50, Appendix H.

If an area has *at least one* monitor recording four or more exceedances during a 3-year period, then the average number of exceedance days per year exceeds one, and the area has not attained the standard.

Conversely, if an area has all monitors with an average number of exceedance days per year less than or equal to one, only then has the area attained the standard.

For this proposal, we have based our determination of whether the Washington nonattainment area attained the 1-hour ozone standard by November 15, 1999, on both the area's design value and the average number of exceedance days per year during the 1997 to 1999 period.

The effect of a reclassification to severe on the Washington nonattainment area is to set a new attainment deadline for the area of November 15, 2005, and to require the State to submit a SIP revision that meets the CAA's requirements for severe ozone nonattainment areas. See CAA sections 181(a) and 182(i). Under section 182(i), we may set the submittal deadlines for these new planning requirements.

B. What Is the Applicable Ozone Season Air Quality Data for the Washington Area?

Table 3 lists the average number of days when ambient ozone concentrations exceeded the one-hour ozone standard at each monitoring site in the Washington area for the period 1997–1999. The ozone design value for each monitor is also listed for the same period. A complete listing of the ozone exceedances for each monitoring site, as well as EPA's calculations of the design values, can be found in the docket file for this action. The data in Table 3 show that, for 1997–1999, many monitoring sites in the Washington area averaged more than one exceedance day per year. Therefore, pursuant to section 181(b)(2)(B) of the CAA, we propose to find that the Washington area did not attain the one-hour standard by the November 15, 1999, deadline.

TABLE 3.—AIR QUALITY DATA FOR THE WASHINGTON AREA (1997–1999)

Site	Monitor ID	Number of days over standard	Number of expected days over standard	Average number of expected exceedances (Note 1)	Site design value (ppm)
Tacoma School, Washington, DC	110010025–1	1	1.0	0.3	0.117
River Terrace, Washington, DC	110010041–1	3	3.0	1.0	0.120
McMillan Reservoir, Washington, DC	110010043–1	4	4.0	1.3	0.128
Calvert Co, MD	240090010–1	0	0.0	0.0	0.115
Southern Maryland, Charles Co, MD	240170010–1	4	4.1	1.4	0.125
Frederick Co, MD (Note b)	240210037–1	2	3.0	1.5	0.114
Rockville, Montgomery Co, MD	240313001–1	2	2.0	0.7	0.118
Greenbelt, Prince Georges Co, MD (Note c)	240330002–1	12	12.7	4.2	0.132
Suitland-Silver Hill, Prince Georges Co, MD	240338001–1	6	6.2	2.1	0.126
Arlington Co, VA	510130020–1	4	4.3	1.4	0.126
Chantilly, Fairfax Co, VA	510590005–1	2	2.1	0.7	0.118
Mount Vernon, Fairfax Co, VA	510590018–1	3	3.2	1.1	0.124
Franconia, Fairfax Co, VA (Note b)	510590030–1	1	1.0	0.5	0.118
Seven Corners, Fairfax Co, VA	510591004–1	3	3.0	1.0	0.124
McLean, Fairfax Co, VA	510595001–1	1	1.0	0.3	0.114
Ashburn, Loudoun Co, VA (Note b)	511071005–1	0	0.0	0.0	0.116
Long Park, Prince William Co, VA	511530009–1	1	1.2	0.4	0.115

[3] If an area does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and the states comprising the area have fully implemented its applicable SIP, the States may apply to us, under CAA section 181(a)(5), for a one-year extension of the attainment date. We do not discuss this provision further in this proposal because the Washington area did not have the requisite clean air data.

[4] See generally 57 FR 13506, April 16, 1992, and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; ''Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas,'' dated February 3, 1994. While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

TABLE 3.—AIR QUALITY DATA FOR THE WASHINGTON AREA (1997–1999)—Continued

Site	Monitor ID	Number of days over standard	Number of expected days over standard	Average number of expected exceedances (Note 1)	Site design value (ppm)
Widewater, Stafford Co, VA	511790001–1	3	3.0	1.0	0.124
Alexandria City, VA	515100009–1	2	2.1	0.7	0.123

a. A violation occurs when the number of expected exceedances is greater than 3.1 over a 3-year (rolling) period (or a 3-year (rolling) average greater than 1.04). The statistical term ''expected exceedances'' is an arithmetic average explained at 40 CFR part 50, Appendix H.
b. New monitoring site with only two years (1998 and 1999) of data for the 1997 to 1999 period.
c. Monitor represents the 1997–1999 design value for the Washington area.
Raw data source: U.S. EPA Aerometric Information Retrieval System (AIRS) database.

Several monitors recorded more than two or more exceedances in 1999. These included the McMillan Reservoir monitor in the District, the Southern Maryland, and Greenbelt monitors in Maryland and the Arlington County monitor in Virginia.

VII. Why Did EPA Defer Making a Finding of Nonattainment Regarding the Washington Area's Attainment Status Beyond the Time Frame Prescribed by the CAA?

For some time, EPA has recognized that pollutant transport can impair an area's ability to meet air quality standards by the date prescribed in the Act. In March 1995 a collaborative, Federal-state process to assess the ozone transport problem began. Through a two-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost states and the District of Columbia, industry representatives, academia, and environmental groups to develop recommended strategies to address transport of ozone and ozone-forming pollutants across state boundaries.

On November 7, 1997, EPA acted on OTAG's recommendations and issued a proposal (the proposed oxides of nitrogen (NO_X) SIP call, 62 FR 60318) requiring 22 states and the District of Columbia to submit state plans addressing the regional transport of ozone. These SIP revisions will decrease the transport of ozone across state boundaries in the eastern half of the United States by reducing emissions of NO_X (a precursor to ozone formation). EPA took final action on the NO_X SIP call on October 27, 1998 (63 FR 57356). EPA expects the final NO_X SIP call will assist many areas in attaining the 1-hour ozone standard.

On July 16, 1998, in consideration of these factors and the realization that many areas were unable to meet the CAA-mandated attainment dates due to transport, EPA's then Acting Assistant Administrator, Richard Wilson, EPA issued an attainment date extension policy.[5] Under this policy, the attainment date for an area may be extended provided that the following criteria are met: (1) The area is identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date, or an upwind area in another state that significantly contributes to downwind nonattainment (by ''affected by transport,'' EPA means an area whose air quality is affected by transport from an upwind area to a degree that affects the area's ability to attain); (2) an approvable attainment demonstration is submitted along with any necessary, adopted local measures and with an attainment date that shows that the area will attain the 1-hour standard no later than the date that the reductions are expected from upwind areas under the final NO_X SIP call and/or the statutory attainment date for upwind nonattainment areas, *i.e.*, assuming the boundary conditions reflect those upwind reductions; (3) the area has adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment, assuming the reductions occur as required in the upwind areas; and (4) the area provides it will implement all adopted measures as expeditiously as practicable but no later than the date by which the upwind reductions needed for attainment will be achieved (64 FR 14441, March 25, 1999).

EPA contemplated that when it acted to approve such an area's attainment demonstration and attainment date extension, it would, as necessary, extend that area's attainment date to a date appropriate for that area in light of the schedule for achieving the necessary upwind reductions. As a result, the area would no longer be subject to reclassification or ''bump-up'' for failure to attain by its original attainment date under section 181(b)(2).

The State of Maryland, the Commonwealth of Virginia and the District of Columbia each submitted a request for such an extension of the attainment date for the Washington nonattainment area. In a January 3, 2001 (66 FR 586), final rule, EPA approved these requests along with attainment demonstration SIP revisions. The Sierra Club and its local chapters filed a petition for review in the United States Courts of Appeals for the appropriate circuits.[6] The petitions were consolidated in the United States Courts of Appeals for the District of Columbia Circuit.

On July 2, 2002, the United States Courts of Appeals for the District of Columbia Circuit (the Court) issued its ruling that vacated our January 3, 2001, final rule. With respect to the attainment date extension, the Court found that the plain language of Clean Air Act ''sets a deadline without an exception for setbacks owing to ozone transport.'' The Court said that the EPA was without authority to extend the Washington, DC area's attainment deadline unless it also ordered the area to be reclassified as a ''severe'' area.

Because we can no longer grant the Washington area an attainment date extension using the July 16, 1998, policy, we must determine whether the Washington area will be reclassified by operation of law to severe if we issue a final action finding that the area failed to attain.

VIII. Has Air Quality Improved in the Washington Area in Recent Years?

The air quality in the Washington area has improved significantly since the area was designated nonattainment following enactment of the 1990 CAA amendments, when the area's (1987–1989) ozone design value was 0.165

[5] Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998.

[6] The District of Columbia lies within the jurisdiction of the District of Columbia Circuit and Maryland and Virginia lie within the Fourth Circuit.

ppm. The most recent (*i.e.*, 1999–2001) area-wide ozone data shows a continuing downward trend in the numbers of violations and ozone design values. The area now has only three monitors violating the standard, and of these, the maximum number of violations is 2.0 at the Greenbelt monitor in Maryland. The current design value is 0.130 ppm. The 1987–1989, 1997–1999 and 1999–2001 data are summarized in Table 4.

TABLE 4—AIR QUALITY DATA SUMMARY FOR 1987 TO 1989, 1997 TO 1999 AND 1999 TO 2001

Site	Monitor ID	1987 to 1989		1997 to 1999		1999 to 2001	Average number of expected exceedances
		Average number of expected exceedances	Design value	Average number of expected exceedances	Design value		Design value
West End, Washington, DC (Note a)	110010017–1	1.8	0.120	N.D.	N.D.	N.D.	N.D.
Tacoma School, Washington, DC	110010025–1	5.0	0.165	0.3	0.117	1.0	0.117
River Terrace, Washington, DC	110010041–1	N.D.	N.D.	1.0	0.120	0.3	0.120
McMillan Reservoir, Washington, DC	110010043–1	N.D.	N.D.	1.3	0.128	1.6	0.125
Calvert Co, MD	240090010–1	N.D.	N.D.	0.0	0.115	0.0	0.112
Southern Maryland, Charles Co, MD	240170010–1	5.0	0.145	1.4	0.125	0.7	0.121
Frederick Co, MD (Note b)	240210037–1	N.D.	N.D.	1.5	0.114	0.4	0.114
Rockville, Montgomery Co, MD	240313001–1	5.3	0.140	0.7	0.118	0.3	0.113
Greenbelt, Prince Georges Co, MD	240330002–1	6.8	0.157	4.2	0.132	2.1	0.130
Suitland-Silver Hill, Prince Georges Co, MD	240338001–1	7.6	0.163	2.1	0.126	1.4	0.126
Arlington Co, VA	510130020–1	5.4	0.145	1.4	0.126	0.7	0.122
Chantilly, Fairfax Co, VA (Note c)	510590005–1	N.D.	N.D.	0.7	0.118	0.0	0.113
Mount Vernon, Fairfax Co, VA	510590018–1	8.1	0.162	1.1	0.124	0.8	0.121
Franconia, Fairfax Co, VA (Note b)	510590030–1	N.D.	N.D.	0.5	0.118	0.3	0.117
Seven Corners, Fairfax Co, VA (Note d)	510591004–1	8.0	0.155	1.0	0.124	0.5	0.111
McLean, Fairfax Co, VA	510595001–1	7.1	0.144	0.3	0.114	0.7	0.115
Ashburn, Loudoun Co, VA (Note b)	511071005–1	N.D.	N.D.	0.0	0.116	0.0	0.106
Long Park, Prince William Co, VA (Note c)	511530009–1	N.D.	N.D.	0.4	0.115	0.0	0.108
Widewater, Stafford Co, VA (Note c)	511790001–1	N.D.	N.D.	1.0	0.124	0.3	0.106
Alexandria City, VA	515100009–1	1.7	0.130	0.7	0.123	0.3	0.117
Fairfax City, VA (Note a)	516000005–1	6.1	0.146	N.D.	N.D.	N.D.	N.D.

Notes:
N.D. denotes no data.
a. Discontinued Monitoring site.
b. New Monitoring site with only two years (1998 and 1999) of data for the 1997 to 1999 period and three years of data for 1999 to 2001.
c. New Monitoring Site with three years of data for 1997 to 1999 and all later periods.
d. Also known as the ''Lewinsville'' site.

IX. What Actions Has the District, Maryland and Virginia Taken To Improve Air Quality in the Washington Area?

EPA has approved, and the District, Maryland and Virginia have implemented, VOC emission reductions as part of the State's 15 Percent Rate-of-Progress Plan, and VOC and NO_X emission reductions as part of the Post-1996 Rate-of-Progress Plan. The area has already opted into the Federal reformulated gasoline program. For an extensive summary of these plans and the measures currently in place or scheduled for future implementation refer to the preambles of our December 16, 1999 (64 FR at 70471–70474), and January 3, 2001 (66 FR at 589–590), **Federal Register** publications. In addition, since the January 3, 2001, final rule, the District and Virginia have adopted rules to implement the NO_X SIP call with implementation in 2003 and 2004, respectively. Virginia submitted its rule on June 25, 2002.[7] *See* 67 FR 48032, July 23, 2002. We approved the District's rule on November 1, 2001, (66 FR 55099).

X. If We Finalize Our Proposed Rulemaking Reclassifying the Washington Area, What Would Be the Area's New Classification?

As stated previously, section 181(b)(2)(A) of the Act requires that, when an area is reclassified for failure to attain, its reclassification must be the higher of the next higher classification or the classification applicable to the area's ozone design value at the time the notice of reclassification is published in the **Federal Register**. However, no area can be reclassified as extreme based upon its design value. The official design value of the Washington area based on quality-assured ozone monitoring data from 1997–1999 is 0.132 ppm. The classification corresponding to this value is ''marginal'' nonattainment. By contrast, the next higher classification for the Washington area is ''severe'' nonattainment. Because ''severe'' is a higher nonattainment classification than ''marginal,'' under the statutory scheme, the area would be reclassified to severe nonattainment. Refer to Table 3 above.

XI. What Progress Has the Washington, DC Area Made Towards Planning To Attain the Ozone NAAQS by 2005?

In April 1998, the District, Maryland and Virginia each submitted modeling and a weight of evidence demonstration setting local overall emissions budgets when combined with boundary conditions consistent with the NO_X SIP

[7] This June 25, 2002, submittal was to set statewide requirements on electric generating utilities. Virginia has already adopted two SIP revisions that effectively impose a 0.15 pounds of NO_X per million BTU heat input on emissions units at two electric generating facilities in the Washington area. On December 14, 2000 (65 FR 78100), EPA approved these two SIP revisions.

call to demonstrate attainment of the 1-hour ozone NAAQS. While the air quality modeling analysis considered projected local emissions levels that were expected to occur by 1999, the calendar year itself is not an input to the air quality model. The air quality model responds only to the meteorology (temperature, wind patterns, etc.) of the selected episode, the ozone and precursor levels at the boundaries of the grid of the area being modeled and the overall change in local emissions levels in the local area. During February 2000, the States submitted SIP revisions that demonstrated that the local overall emissions budgets set by the air quality modeling demonstration could be achieved in 2005 with a combination of Federally promulgated national measures and local measures in the approved SIPs. (For a discussion of these measures and their status as of January 3, 2001, *see* 66 FR at 589–590, January 3, 2001.)

XII. What Would a Reclassification Mean for the Washington Area?

If reclassified, the Washington area would need to attain the one-hour ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. The District, Maryland and Virginia would also need to submit SIP revisions addressing all the severe area requirements for the one-hour standard specified in sections 182(a) through 182(d) of the Act. The SIP requirements for severe ozone nonattainment areas include, but are not limited to, the following:

(1) Attainment demonstration for 2005 and rate-of-progress demonstrations for 2002 and 2005 including adequate on-road mobile emissions budgets for transportation conformity purposes.

(2) A 25 ton-per-year major stationary source threshold for volatile organic compounds and nitrogen oxides.

(3) More stringent new source review requirements.

(4) Enforceable transportation control strategies and measures to offset projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements.

(5) Contingency measures.

XIII. What Are the Transportation Conformity Implications of Reclassification?

The ozone reclassification in and of itself would not immediately affect the applicable motor vehicle emissions budgets in the Washington area. Currently the only applicable motor vehicle emission budgets for the District, Maryland and Virginia are those for VOC and NO_X in the approved rate-of-progress plan for 1999 and two sets of outyear budgets established for 2015 and for 2020.[8] Until such time as rate-of-progress and/or 2005 attainment year ozone budgets have been determined to be adequate or are approved, these 1999 budgets apply until 2015, at which point the outyear budgets apply for 2015 and all future years. See 65 FR 40167, July 3, 2000.

Our January 3, 2001, final rule approved motor vehicle emissions budgets for 2005 which were contained within the February 2000 submittals, but the Court's July 2, 2002, decision has vacated our approval action. We had found these budgets to be adequate on June 8, 2000, (65 FR 36439), but have always interpreted the transportation conformity rule such that a final rulemaking action approving a control strategy or maintenance plan SIP renders any prior adequacy determination made for budgets related to that particular control strategy or maintenance plan SIP of no further force or effect. Instead, the final rulemaking governs which budgets apply for conformity purposes. We also interpret our transportation conformity rule to mean that once an approval is vacated the prior adequacy determination is not resurrected. We made the prior adequacy determination based upon the record before us at that time. At the very least, we are now confronted with the fact of the Court's *vacatur* of the January 3, 2001, final rule and thus must consider whether or not the Court's ruling precludes a determination of adequacy of the calendar year 2005 motor vehicle emissions budgets in the February 2000 SIP submissions.

We initiated a new adequacy process with respect to the budgets for 2005 that were contained in the February 2000 plan. On September 9, 2002, we completed the public notice and comment portion of the process to determine the adequacy process. EPA received adverse comments on the adequacy of these budgets, and is currently considering appropriate action in response to those comments. Further information on any findings of adequacy can be found at *http://www.epa.gov/otaq/transp/conform/adequacy.htm.*

Once new severe area budgets are submitted and have been determined adequate, these post-1999 rate-of-progress budgets would set emission caps for any post-1999 milestone years (2002 and 2005), and the new attainment year budgets would apply to the 2005 attainment year and all years beyond the attainment year up to the point when an outyear budget has been established.

[8] There are also approved VOC budgets in the 15 percent rate-of-progress plan, but these are effectively superceded by the approved 1999 VOC budgets which are both for a later year and are more stringent. See 40 CFR 93.118.

XIV. How Does the Recent Release of MOBILE6 Interact With Reclassification?

A. What Is the Relationship Between MOBILE6 and the Attainment Year Motor Vehicle Emissions Budgets

The 2005 motor vehicle emissions budgets contained in the February 2000 submittal are not based upon the most recent mobile source emission factors model, MOBILE6. The February 2000 attainment plan SIP submissions relied upon reductions from EPA's Tier 2 Federal motor vehicle control program standards and Sulfur in gasoline rule (the Tier 2/Sulfur program) to in effect demonstrate that the reduction in local emissions between 1990 and 2005 would be greater than or equal to the reduction in local overall emissions assumed in the air quality modeling demonstration. We have always stated that the benefits of the Tier 2 program cannot be accurately estimated until MOBILE6 is released. Before the official release of the MOBILE6 emission factor model, we required States that adopted benefits of the Tier 2/Sulfur program into their attainment demonstrations (and certain other SIP revisions) to submit an enforceable commitment to revise the motor vehicles emissions budgets within either one or two years of the release of the MOBILE6 model. For further detail on our rationale regarding this commitment see 64 FR 70460, December 16, 1999, and 65 FR 46383, July 28, 2000. The District, Maryland and Virginia submitted an enforceable commitment to revise the motor vehicles emissions budgets within one-year of the release of the MOBILE6 model. Because the MOBILE6 model was released on January 29, 2002, (67 FR 4254) the commitment required submittal of revised budgets by January 29, 2003. We believe that approval of this commitment only has context within the framework of an approval of the attainment demonstration under the conditions we laid out in our January 3, 2001, final rule and in the proposed actions leading up to that final action. We have interpreted the Court of Appeals's July 2, 2002, ruling as vacating the approval of this commitment.

We expect that any subsequent motor vehicle emissions budgets submitted to fulfill the severe area requirements

including that of the attainment demonstration will be prepared using the MOBILE6 emissions factor model and pursuant to applicable guidance and policy such as that found in the January 18, 2002, joint memorandum from John S. Seitz and Margo Tsirigotis Oge entitled ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity'' (January 18 MOBILE6 policy). Thus, although the obligation to submit MOBILE6 budgets by January 29, 2003, has been vacated, the severe area SIP when submitted must contain budgets based on MOBILE6 modeling.

B. What Is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress Requirement

In our guidance documents, the EPA has interpreted the section 182(c)(2) reasonable further progress requirement as mandating volatile organic compounds (VOC) or nitrogen oxides (NO_X) reductions of 3 percent per year, averaged over a 3-year period, for serious and above ozone nonattainment areas that were designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the rate-of-progress requirement.

The January 18, 2002, MOBILE6 policy guidance indicates that among other things, the motor vehicle emissions budgets in the post-1999 rate-of-progress plans will have to developed using MOBILE6. In this policy we said:

> In general, EPA believes that MOBILE6 should be used in SIP development as expeditiously as possible. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[9]

Since the area is only now beginning work on the post-1999 rate-of-progress plans as a result of reclassification to severe, these plans will need to be based upon MOBILE6.

The post-1999 rate-of-progress requirement flows from section 182(c)(2)(B) which requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reduction from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date.[10] Baseline emissions are the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under certain Federal programs and Clean Air Act mandates: phase 2 of the Federal gasoline Reid vapor pressure regulations (Phase 2 RVP) promulgated on June 5, 1990 (see 55 FR 23666); the Federal motor vehicle control program in place as of January 1, 1990 (1990 FMVCP); and certain changes and corrections to motor vehicle inspection and maintenance (I/M) programs and corrections and reasonably available control technology (RACT) that were required under section 182(a)(2).[11] We have issued guidance that provides detailed information on for implementing the rate-of-progress provisions of section 182.[12] Basically our guidance requires the calculation of a target level of emissions for each rate-of-progress milestone year. The target level for any rate-of-progress milestone year is the 1990 baseline emissions decreased by the amount of baseline emissions that would be reduced by the 1990 FMVCP and the Phase 2 RVP program by that year *and* reduced by the amount of the mandated minimum reductions (15 percent VOC by 1996, and an additional nine (9) percent VOC, or VOC and NO_X by 1999, * * *). Under our guidance the first rate-of-progress milestone year target levels, for example, the 15 percent VOC reduction by 1996 requirement, starts with the 1990 base year emissions and then subtracts the effects of the 1990 FMVCP and Phase 2 RVP through 1996 and also subtracts the required 15 percent VOC reduction. The 1999 VOC target level starts with the 1996 target level and subtracts the effects between 1996 and 1999 of the 1990 FMVCP and Phase 2 RVP and subtracts the required 9 percent post-1996 reduction. For each target level, our guidance requires the preparation of a 1990 base year inventory ''adjusted'' to the milestone year (the ''1990 adjusted base year inventory'') to account for the effects of the 1990 FMVCP and Phase 2 RVP by the milestone year. The adjusted inventory uses 1990 motor vehicle activity levels but emission factors computed by MOBILE6 for the applicable milestone year. For example, preparation of a rate-of-progress plan for 1999 with NO_X substitution requires a 1990 base year inventory for both VOC and NO_X, a 1990 base year VOC inventory adjusted to 1996 and 1990 base year VOC and NO_X inventories inventory adjusted to 1999. Preparation of a rate-of-progress plan for 1999 with NO_X substitution requires a 1990 base year inventory for both VOC and NO_X plus the following seven ''adjusted'' inventories: 1996 VOC; 1999 VOC and NO_X; 2002 VOC and NO_X and 2005 VOC and NO_X.

One consequence of the need to use MOBILE6 emission factors in the post-1999 rate-of-progress plan is that the area must recompute the 1990 baseline emissions using the MOBILE6 emissions factor model to update the 1990 on-road mobile sources portion of the 1990 base year emission inventory. The area must also calculate post-1999 rate-of-progress target levels by re-iterating the target levels for rate-of-progress requirements for the 1996 and 1999 milestone years.

In addition to vehicle emissions budgets for any applicable milestone year, the post-1999 rate-of-progress requirement will also require the development of a revision to the 1990 base year emissions inventories and development of up to seven 1990 adjusted inventories (VOC for 1996, VOC and NO_X for 1999, VOC and NO_X for 2002, plus VOC and NO_X for 2005).

XV. If the Washington Area Is Reclassified to Severe, What Would Its New Schedule Be?

A. What Would the Attainment Date Be?

If the Washington area is reclassified to severe, the new attainment deadline under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, *i.e.*, November 15, 2005.

B. When Are the Required SIP Revisions Due?

The District, Maryland and Virginia would be required to submit a SIP that adopts all the severe area requirements. Under section 181(a)(1) of the Act, the new attainment deadline for serious areas reclassified to severe under section 181(b)(2) would be as expeditious as practicable, but no later than the date applicable to the new classification, *i.e.*, November 15, 2005. When we issue any final finding of failure to attain that reclassifies the Washington area, we must also address the schedule by which the District, Maryland and Virginia will be required to submit a SIP revision meeting the severe area requirements. Pursuant to section 182(i), EPA can adjust any

[9] See Clean Air Act section 172(c)(3) and 40 CFR 51.112(a)(1).

[10] As a serious area the Washington area was required to submit a rate-of-progress plan for a nine (9) percent reduction for the 3-year period November 15, 1996, through November 15, 1999.

[11] These requirements under section 182(a)(2) are known I/M and RACT corrections or I/M and RACT ''fix-ups.'' For further explanation of these see 57 FR at 13503–13504, April 16, 1992.

[12] This includes among others: Guidance on the Post -1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA–452/R–93–015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html* (file name: ''post96_2.zip'').

applicable deadline (other than the attainment date) as appropriate for any area reclassified under section 181(b) of the CAA. We propose to have the District, Maryland and Virginia submit this SIP by the earlier of the following dates: within one year of the effective date of a final action on the proposed finding of failure to attain and any consequent reclassification or March 1, 2004. If any of the Washington area States fail to submit a complete severe area SIP that addresses the new severe area requirements by the deadline set in a final rule reclassifying this area, we will start a sanctions clock pursuant to CAA section 179(a)(1) for failure to submit a required SIP revision.

EPA believes that this proposed rule provides ample advance notice to the affected jurisdictions that the severe area requirements may become applicable to the Washington area. However, the issuance of the MOBILE6 emission factor model will require the area to recompute the 1990 base year emissions and restate pre-1999 rate-of-progress targets using MOBILE6. This will require significantly more inventory preparation than would have occurred had the MOBILE5 model remained in force and the area could have used the MOBILE5-based 1990 base year emissions inventories and target levels through 1999. A March 1, 2004, submittal deadline will require the jurisdictions to have adopted additional emission control regulations that can allow sources a minimally reasonable time to comply before the start of the 2005 ozone season and, for measures needed solely to meet rate-of-progress requirements, slightly longer to comply before the rate-of-progress deadline of November 15, 2005. This schedule is for all the severe area SIP requirements. We solicit comments on this proposed schedule.

C. What Will Be the Rate-of-Progress and Contingency Measure Schedules?

(1) 2002 Rate-of-Progress Milestone

Section 182(c)(2)(B) requires serious and above areas achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reductions from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date. Therefore, a serious area must achieve a 9 percent reduction between November 15, 1996, and November 15, 1999; a severe area with an attainment date of November 15, 2005, additionally has to achieve an additional 9 percent reduction by November 15, 2002, and a further 9 percent reduction by November 15, 2005.

Under the schedule for submittal of all severe area requirements that is proposed in the preceding section of this document under the heading ''B. When are the Required SIP Revisions Due,'' the rate-of-progress plan for the 2002 milestone year will be due well after the November 15, 2002, milestone date for the first of the post-1999 9 percent reduction requirements.

If sufficient actual reductions occurring by the November 15, 2002, milestone date do not now exist, then Maryland, Virginia or the District can only get reductions after the milestone deadline because, at this point, the States do not have the ability to require additional reductions for a period that has already passed. We believe the passing of the deadline does not relieve Maryland, Virginia or the District from the requirement to achieve the 9 percent reduction in emissions, but rather the 9 percent reduction needs to be achieved as expeditiously as practicable after November 15, 2002.

The approved SIPs for the area contain measures that either were not used in the demonstration of rate-of-progress by 1999 or that generate additional benefits after November 15, 1999, over and above what was credited to the rate-of-progress plan for 1999. Such measures include the National Low Emission Vehicle program in the entire area and, in the District and Maryland portions of the Washington area, beyond RACT reduction requirements on large sources of NO_X. The area also opted-into the Federal reformulated gasoline (RFG) program. The second phase of the RFG program, which went into effect on January 1, 2000, also produces reductions creditable towards the 2002 rate-of-progress requirement.

As discussed elsewhere in this document in the section titled ''What is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress,'' the CAA specifies the emissions ''baseline'' from which each emission reduction milestone is calculated. Section 182(c)(2)(B) states that the reductions must be achieved ''from the baseline emissions described in subsection (b)(1)(B).'' This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(B) defines baseline emissions (for purposes of calculating each milestone VOC/NO_X emission reduction) as ''the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment'' (emphasis added) and excludes from the baseline the emissions that would be eliminated by certain specified Federal programs and ceratin changes to state I/M and RACT rules.[13] The 1990 adjusted base year inventory must be recalculated relative to each milestone and attainment date because the emission reductions associated with the FMVCP increase each year due to fleet turnover.[14]

Therefore, EPA concludes that the area has already implemented measures creditable towards the 2002 rate-of-progress milestone. However, we are not able to conclude that the area has sufficient measures to achieve the required 9 percent reduction by November 15, 2002, in the absence of a full blown rate-of-progress plan for the 2002 milestone year that documents the calculations of the 2002 target levels of emissions, documents how the SIP accounts for expected growth in emissions related activities and contains the requisite demonstration that sufficient creditable reductions have or were projected to occur by November 15, 2002. We have insufficient data concerning what the levels of reductions will be in the area by 2002, what the proper 1990 adjusted base year inventory for 2002 will be or how much emissions growth will occur in the period November 15, 1999, through November 15, 2002. Nor do we have sufficient information to allow us to determine what date will be as expeditiously as practicable after November 15, 2002, for this first post-1999 9 percent rate-of-progress requirement.

EPA proposes that the 2002 rate-of-progress requirement be that the District, Maryland and Virginia submit a rate-of-progress plan that demonstrates that the SIP has sufficient measures to make the required percent reduction by November 15, 2002, or by a date as expeditiously as practicable thereafter.[15] Such SIP revisions will have to demonstrate that any date after November 15, 2002, by which the first post-1999 9 percent rate-of-progress reduction is achieved is that which is as expeditiously as practicable.

(2) 2005 Rate-of-Progress

EPA is not proposing any change to the date by which the second 9 percent increment of post-1999 rate-of-progress

[13] These are the 1990 FMVCP, Phase 2 RVP, and the I/M and RACT fix-ups.

[14] See U.S. EPA, (1994), Guidance on the Post-1996 Rate-of-Progress Plan (RPP) and Attainment Demonstration, EPA–452/R–93–015 (Corrected version of February 18, 1994). An electronic copy may be found on EPA's Web site at *http://www.epa.gov/ttn/oarpg/t1pgm.html* (file name: ''post96_2.zip'').

[15] EPA believes that such date cannot be any later than November 15, 2005.

must be achieved. If the currently adopted and approved SIP measures and the current suite of Federal measures will not achieve the required rate-of-progress reductions, we believe the area has sufficient time to adopt and implement measures to achieve the required reductions by November 15, 2005.

(3) Contingency for Failure To Achieve Rate-of-Progress by November 15, 2002

The contingency measures plan must identify specific measures to be undertaken if the area fails to meet any applicable milestone, failure to make rate-of-progress or failure to attain the NAAQS. With respect to the November 15, 2002, milestone, EPA believes that the contingency plan will need to account for any adjustment to the milestone date.

XVI. What Is the Impact of Reclassification on Title V Operating Permit Programs?

Upon reclassification the major stationary source threshold will be lowered from 50 tons per year (TPY) to 25 TPY. Consequently, the District's, Maryland's and Virginia's Title V operating permits program regulations need to cover sources that will become subject to the lower major stationary source threshold. EPA has reviewed the relevant permit program regulations for the Washington area states. This review indicates that the three program regulations will apply the requisite 25 TPY major stationary source threshold to the Washington area if this area is reclassified to severe. No changes to the State's' Title V permit program regulations will be required as a result of a reclassification of the Washington area to severe nonattainment.

After any reclassification to severe, additional sources will become subject to the Title V permitting requirements due to the change in the major stationary source threshold from 50 TPY to 25 TPY. Any newly major stationary sources must submit a timely Title V permit application. ''A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.'' *See* 40 CFR 70.5(a)(1). The 12 month (or earlier date set by the applicable permitting authority) time period to submit a timely application will commence on the effective date of any reclassification action.

XVII. What Are the Relevant Policy and Guidance Documents?

Commencing with ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), EPA has issued numerous policy and guidance memoranda and guidance documents related to the attainment demonstration, rate-of-progress and other requirements related to the severe area classification. These documents are too numerous to list here.

Several have already been cited elsewhere in this document.

Several of the documents identified in prior **Federal Register** publications related to the Washington area, for example, those listed at 64 FR at 70469, December 16, 1999, no longer are applicable in this instance because they have dealt with quantifying the benefits of our Tier 2 regulations prior to the release of MOBILE6 and have become unnecessary since the release of the MOBILE6 model and the January 18 MOBILE6 policy.[16] The final mid-course review guidance has been released whereas prior **Federal Register** publications referenced a draft.[17] And the Memorandum, ''Extension of Attainment Dates for Downwind Transport Areas,'' issued July 16, 1998, was declared unlawful by the United States Courts of Appeals for the District of Columbia.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing to find that the Metropolitan Washington, D.C. serious ozone nonattainment area has failed to attain the one-hour ozone NAAQS by November 15, 1999, the date set forth in the Clean Air Act (CAA or Act) for serious nonattainment areas. If EPA takes final action to issue this proposed finding of failure to attain, the area would be reclassified as a severe ozone nonattainment area by operation of law. EPA is proposing to require the District of Columbia, the State of Maryland and the Commonwealth of Virginia to submit revisions to its State Implementation Plan (SIP) that adopt the severe area requirements within one year of the effective date of a final action on the attainment determination and any consequent reclassification but not later than March 1, 2004, whichever is sooner. Finally, EPA is proposing to adjust the dates by which the area must achieve a nine (9) percent reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and contingency measure requirement as this relates to the 2002 rate-of-progress requirement.

XVIII. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''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.''

The Agency has determined that the proposed finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

For this reason, the proposed finding of nonattainment and reclassification is

[16] These are the two following memoranda: ''Guidance on Motor Vehicle Emissions Budgets in One-Hour Attainment Demonstrations,'' of November 3, 1999, and ''1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking.'' of November 8, 1999.

[17] Memorandum ''Mid-Course Review Guidance for the 1-Hour Ozone Nonattainment Areas that Rely on Weight-of-Evidence for Attainment Demonstration'' from Lydia N. Wegman and J. David Mobley to the Air Division Directors, Regions I–X of March 28, 2002.

also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001).

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 proposed action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

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.'' 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 proposed 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. This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law 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 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

This proposed 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).

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. *See* 62 FR 60001, 60007–60008, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the proposed finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 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 proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

This proposed action to reclassify the Washington, DC area as a severe ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

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

Dated: November 4, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

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