

17, 2002, is adopted as a final rule without change.

[FR Doc. 04-13764 Filed 6-17-04; 8:45 am]

BILLING CODE 8320-01-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

[OAR-2003-0083; FRL-7775-5]

#### Air Quality Designations and Classifications for the 8-Hour Ozone; National Ambient Air Quality Standards; Deferral of Effective Date

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting a deferral of the effective date, to September 13, 2004, of the 8-hour ozone nonattainment designation for Clark County, Nevada. This deferral is based on additional information submitted by the State demonstrating that, due to the late finding of nonattainment in the State, the State did not have sufficient time to recommend an appropriate boundary for the Las Vegas nonattainment area. EPA believes the relevant factors for defining a nonattainment area may support a different boundary recommendation than the one submitted by the State on April 12, 2004, and a short deferral will provide the State and EPA time to determine whether such an adjustment is appropriate. At the same time, it is certain that at least some portion of Clark County will be designated nonattainment. As such, we do not intend to use this extension of the effective date of the designation to affect the deadline for submittal of the State implementation plan that would otherwise apply if the effective date were not deferred and further believe the extension should not delay attainment of the ozone standard or the ability of the State to achieve attainment as expeditiously as practicable.

**DATES:** *Effective Date:* This final rule is effective on June 15, 2004.

**ADDRESSES:** The EPA has established dockets for this action under Docket ID No. OAR-2003-0083 (Designations). All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material,

is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA's designation Web site at: <http://www.epa.gov/oar/oaqps/glo/designations> and on the Tribal Web site at: <http://www.epa.gov/air/tribal>. In addition, the public may inspect the rule and technical support at the following locations:

U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office, 75 Hawthorne Street, San Francisco, California 94105.

**FOR FURTHER INFORMATION CONTACT:** Steven Barhite, Chief, Planning Office, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105. The telephone number is (415) 972-3980. Mr. Barhite can also be reached via electronic mail at [barhite.steven@epa.gov](mailto:barhite.steven@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. What Action Is EPA Taking Today?

The EPA is deferring the effective date of the nonattainment designation for Clark County, Nevada (County). This action modifies the effective date for Clark County provided in our final 8-hour ozone designations rule published April 30, 2004. 69 FR 23858. In that final rule we noted that the effective date for the Clark County nonattainment designation would be June 15, 2004. See 69 FR at 23919-20 (revising 40 CFR § 81.329). With today's action, the new effective date for the County's nonattainment designation will be September 13, 2004. We are not changing the designation of the County at this time, but, as explained below, believe the deferral is necessary to allow the State of Nevada (State) to account for newly discovered information and accurately define the appropriate nonattainment area boundaries.

##### II. What Is the Background for This Action?

On April 15, 2004, the EPA Administrator signed a final rule

announcing designations under the 8-hour ozone national ambient air quality standards (NAAQS).<sup>1</sup> In that action we designated Clark County as nonattainment and provided that this designation would become effective on June 15, 2004. Since that notice, the State has submitted additional information explaining that the State's recommendation on the area to be designated nonattainment should be reconsidered and that such an evaluation was not possible prior to EPA's April 15, 2004 deadline for signing the 8-hour ozone designations. Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Michael O. Leavitt, Administrator, U.S. Environmental Protection Agency (June 9, 2004).<sup>2</sup> In the June 9, 2004 letter the State explains that it did not have time to make an appropriate recommendation regarding the boundaries of the nonattainment area in Clark County because it was not discovered until late February 2004 that any portion of Nevada would be designated nonattainment.

The unusual history of the Clark County designation supports the State's claim. In July 2003, the State submitted its recommended designations for the 8-hour ozone designations. See letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (July 10, 2003). Based on the monitoring data provided to the State for the period of 2000 through 2002, the State concluded that all monitors within the State were showing compliance with the 8-hour ozone NAAQS. On December 3, 2003, EPA agreed with the State's recommendation not to designate any Nevada area as nonattainment for the 8-hour ozone standard. See Letter from Wayne Nastri, Regional Administrator, U.S. EPA, Region IX, to Hon. Kenny C. Guinn, Governor of Nevada (December 3, 2004). In that letter EPA noted that the final designation determination would be based on monitoring data and design values for the period 2001 through 2003, but that based on our preliminary review of the air quality monitoring data for the 2003 ozone season, there were no areas in Nevada violating the 8-hour ozone standard. Id. In mid-February 2004, EPA discovered that the July 10, 2003 recommendation from the State had failed to include

<sup>1</sup> This signature date was a deadline for EPA action in accordance with a consent decree. The final rule was published on April 30, 2004. 69 FR 23875.

<sup>2</sup> This letter supplements an earlier letter dated May 21, 2004, from Governor Kenny C. Guinn to Administrator Leavitt.

complete monitoring data for 2001. This overlooked data, in combination with the new 2003 data, resulted in a 2001–03 design value over the applicable standard at one of the monitors (Joe Neal) in the Las Vegas area of Clark County. EPA contacted the State and described that, by default, the metropolitan statistical area (MSA) that included Clark and Nye Counties in Nevada and Mohave County in Arizona should be recommended for designation as nonattainment. Arizona and Nevada were able to prepare an analysis of the ozone problem in the area that supported the exclusion of Nye and Mohave Counties from the nonattainment area. See Letter from Allen Biaggi, Administrator, Nevada Division of Environmental Protection, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (April 12, 2004) (transmitting Nevada Division of Environmental Protection (NDEP) report entitled “Nevada Air Quality Designations and Boundary Recommendations for the 8-Hour Ozone National Ambient Air Quality Standard” (March 26, 2004)); Letter from Stephen A. Owens, Director, Arizona Department of Environmental Quality, to Wayne Nastri, Regional Administrator, U.S. EPA, Region IX (March 26, 2004) (transmitting report entitled “Arizona Boundary Recommendations for the 8-Hour Ozone National Ambient Air Quality Standard” (March 26, 2004)). As a result, three days before the EPA deadline for making designations, the State recommended that Clark County be designated nonattainment. *Id.* As the State has subsequently explained, had NDEP and Clark County discovered earlier that the County should be designated nonattainment, it would have further analyzed the appropriate boundaries within the 8000-square mile County for the nonattainment area. Given the late discovery, however, the State and County could not provide the necessary analysis and defaulted to the County boundaries.<sup>3</sup> Given the size of the County, the geographic features of the area, the location of sources and the monitoring data collected in the outlying portions of the County, it is reasonable to conclude that further analysis could have supported an alternate boundary for the nonattainment area.

In the June 9, 2004 letter, the State further explains why the missing

monitoring data were not discovered until late February, 2004. The monitoring data in question are from the new Joe Neal monitoring station, which began operation in 2000. As a result, it was not until the end of 2003 that three complete years of data were available upon which to calculate a design value. The State’s recommendation had not included the 2003 data, so it had not focused attention on this monitor because, at the time, it had mistakenly assumed the monitor had not been in existence long enough to have an effect on design values. According to the State, the State and County had an expectation that the 2001 data would not affect the design value for the 8-hour ozone designation. See June 9 Letter from Allen Biaggi. The County apparently did not realize certain 2001 data had not been added to the Air Quality System—the system used to support the designation recommendations. Management at the County and State, and within EPA, looking at the monitoring data in the Air Quality System could not see that additional data were available that would have changed the designation conclusion. The State and County have demonstrated to our satisfaction that until late February 2004, they were not aware that the area should be designated nonattainment and, as noted above, by that time did not have time to adequately evaluate the appropriate boundaries for the nonattainment area.

### III. What Action Is EPA Taking To Defer the Effective Date of Nonattainment Designations for Clark County?

Effective June 15, 2004, EPA will defer until September 13, 2004, the effective date of nonattainment designations for Clark County, Nevada by modifying 40 CFR 81.329. EPA is making this change without notice and comment in accordance with section 107(d)(2) of the Clean Air Act, which exempts the promulgation of these designations from the notice and comment provisions of the Administrative Procedure Act.

We are making this deferral action effective on June 15, 2004, which is the date the nonattainment designation would otherwise become effective. Section 553(d) of the Administrative Procedure Act generally provides that rulemakings shall not be effective less than 30 days after publication unless the agency finds good cause for an earlier date. 5 U.S.C. 553(d)(3). EPA is invoking the good cause exception to make the effective date of today’s action June 15, 2004. This notice explains why the current effective date of the

nonattainment designation for Las Vegas should be deferred. Today’s action must take effect by June 15, 2004 in order to achieve that deferral and avoid unnecessary confusion.

EPA does not intend to extend the deadline for state implementation plan submission for the Las Vegas nonattainment area. EPA will address this deadline in a subsequent action but believes it is reasonable to require submission according to the same schedule to which the area would be subject without today’s deferral of the effective date. Likewise, the time by which attainment occurs should not be affected by this action. Today’s deferral of the designation effective date should not delay the attainment of the 8-hour ozone NAAQS because it is clear a core area will still be designated nonattainment and attainment is required as expeditiously as practicable.

### IV. Final Action

The EPA is deferring the effective date to September 13, 2004, of the nonattainment designation for Clark County, Nevada, based on additional information submitted by the State. We are amending 40 CFR § 81.329 to reflect the modified effective date for the County.

### V. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order. Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a

<sup>3</sup> The May 21, 2004 letter from Governor Guinn and the June 9, 2004 letter from Allen Biaggi both note that the State has contracted with the Desert Research Institute to assist in assessing the appropriate boundaries.

“significant regulatory action” because none of the above factors applies. As such, this final rule was not formally submitted to OMB for review.

#### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This rule changes the effective date of a nonattainment designation for Clark County, Nevada that was promulgated on April 15, 2004. The present final rule does not establish any new information collection burden apart from that required by law. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-

profit enterprise which is independently owned and operated and is not dominant in its field. This rule defers the effective date of the nonattainment designation. The deferral of the effective date will not impose any requirements on small entities. After considering the economic impacts of today's final rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

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

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's final action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of \$100 million or more in any 1 year by either State, local, or Tribal governments in the aggregate or to the private sector,

and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. It does not create any additional requirements beyond those of the 8-hour NAAQS for ozone (62 FR 38894; July 18, 1997), therefore, no UMRA analysis is needed. In this rule, EPA is deferring the effective date of nonattainment designation for Clark County, Nevada. The EPA believes that no new controls will be imposed as a result of this action. Thus, this Federal action will not impose mandates that will require expenditures of \$100 million or more in the aggregate in any 1 year.

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

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The CAA establishes the scheme whereby States take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the States and EPA for purposes of developing programs to implement the NAAQS. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” This final rule does not have “Tribal implications” as specified in Executive Order 13175. This rule concerns the deferral of the effective date of the nonattainment designation for Clark County, Nevada. This final

rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have Tribal implications, Executive Order 13175 does not apply. Although Executive Order 13175 does not apply to this rule, prior to designations action promulgated on April 15, 2004, EPA did outreach to Tribal representatives regarding the designations. The EPA supports a national "Tribal Designations and Implementation Work Group" which provides an open forum for all Tribes to voice concerns to EPA about the designation and implementation process for the NAAQS, including the 8-hour ozone standard. These discussions informed EPA about key Tribal concerns regarding designations as the rule was under development.

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

Executive Order 13045: "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The final rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this risk assessment are contained the National Ambient Air

Quality Standards for Ozone, Final Rule (62 FR 38855–38896, July 18, 1997; specifically, 62 FR 38854, 62 FR 38860 and 62 FR 38865).

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

This rule is not subject to Executive Order 13211, "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866. Information on the methodology and data regarding the assessment of potential energy impacts is found in Chapter 6 of U.S. EPA 2002, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-Hour, 0.08 ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.

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

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

#### *J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States on or before

the effective date of this rule. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 15, 2004.

#### *K. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination." The rule designating areas for the 8-hour ozone standard was "nationally applicable" within the meaning of section 307(b)(1) since it established designations for all areas of the United States for the 8-hour ozone NAAQS. Since this final action defers the effective date of one of the designations made in that nationwide rulemaking, any petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit. At the core of the designations rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA. In determining which areas should be designated nonattainment (or conversely, should be designated unclassifiable/attainment), EPA used a set of 11 factors that it applied consistently across the United States. For the same reasons, the Administrator also determined that the final designations are of nationwide scope and effect for purposes of section 307(b)(1). This is particularly appropriate because in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95–294 at 323, 324, reprinted in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of the designations rulemaking extend to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of "nationwide scope or effect" and for

venue to be in the D.C. Circuit. Thus, any petitions for review of this final action must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

**List of Subjects in 40 CFR Part 81**

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

Dated: June 14, 2004.

**Michael O. Leavitt**,  
*Administrator.*

■ For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

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

NEVADA—OZONE (8-HOUR STANDARD)

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

**Subpart C—[Amended]**

■ 2. In § 81.329, the table entitled “Nevada—Ozone (8-Hour Standard)” is amended by revising the entry for “Clark County” to read as follows:

**§ 81.329 Nevada.**

\* \* \* \* \*

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Las Vegas, NV: Clark County .....	(2)	Nonattainment .....	(2)	Subpart 1.
* * * * *				

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>1</sup> This date is June 15, 2004, unless otherwise noted.  
<sup>2</sup> Effective date deferred until September 13, 2004.

\* \* \* \* \*  
 [FR Doc. 04-13851 Filed 6-17-04; 8:45 am]  
**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[OAR-2003-0083-1; FRL-7774-8]

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

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

**SUMMARY:** The EPA is granting a deferral of the effective date, to September 30, 2005, of the nonattainment designation for Hamilton and Meigs Counties, Tennessee, and Catoosa County, Georgia, based on additional information submitted by this area. The basis for this action is an updated modeling analysis completed by this area that demonstrates attainment of the 8-hour ozone National Ambient Air Quality Standards (NAAQS) by December 31, 2007. In addition, in a letter dated May 27, 2004, from the Mayors of the City of Chattanooga and Hamilton County to EPA, the area has fully committed to adopt and implement additional local measures on a schedule consistent with requirements for Early Action Compact (EAC) areas. These measures are also included in the updated modeling analysis.

**DATES:** *Effective Date:* This final rule is effective on June 15, 2004.  
**ADDRESSES:** The EPA has established dockets for this action under Docket ID No. OAR-2003-0083 (Designations) and OAR-2003-0090 (Early Action Compacts). All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742. In addition, we have placed a copy of the rule and a variety of materials regarding designations on EPA’s designation Web site at: <http://www.epa.gov/oar/oaqps/glo/designations> and on the Tribal Web site at: <http://www.epa.gov/air/tribal>. Materials relevant to EAC areas are on EPA’s Web site at: [http://www.epa.gov/ttn/naaqs/ozone/eac/w1040218\\_eac\\_resources.pdf](http://www.epa.gov/ttn/naaqs/ozone/eac/w1040218_eac_resources.pdf). In addition, the public may inspect the rule and technical support at the

following locations: Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.  
**FOR FURTHER INFORMATION CONTACT:** Dick Schutt, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9033. Mr. Schutt can also be reached via electronic mail at [schutt.dick@epa.gov](mailto:schutt.dick@epa.gov).  
**SUPPLEMENTARY INFORMATION:**

**I. What Action Is EPA Taking Today?**

The EPA is reinstating the EAC and deferring the effective date of the nonattainment designation for Hamilton County, TN; Meigs County, TN; and Catoosa County, GA, as a result of additional measures being taken by Chattanooga to improve air quality in the area. The additional measures being implemented in Hamilton County include a seasonal open burning ban and a vehicle inspection and maintenance program (I/M program). These measures have been included in the area’s modeling demonstration and result in modeled attainment by December 2007.

**II. What Is the Background for This Action?**

The EPA entered into EACs with 33 communities on December 31, 2002, including the Chattanooga, TN-GA area. This area successfully completed the