



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2015-0468; FRL-9933-06-OAR]

Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas Classified As Marginal for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing three separate and independent determinations related to the 36 areas that are currently classified as “Marginal” for the 2008 ozone National Ambient Air Quality Standards (NAAQS). First, the EPA is proposing to determine that 17 areas attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015, based on complete, quality-assured and certified ozone monitoring data for 2012-2014. Second, the EPA is proposing to grant 1-year attainment date extensions for eight areas on the basis that the requirements for such extensions under the Clean Air Act (CAA or Act) have been met. Third, the EPA is proposing to determine that 11 areas failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015, and that they are not eligible for an extension, and to reclassify these areas as “Moderate” for the 2008 ozone NAAQS. Once reclassified as Moderate, states must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to 2008 ozone NAAQS nonattainment areas classified as Moderate. In this action, the EPA is proposing and taking comment on two options

for the deadline by which states would need to submit to the EPA for review and approval the SIP revisions required for Moderate areas once their areas are reclassified.

DATES: *Comments.* Comments must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. *Public Hearings.* If anyone contacts us requesting a public hearing on or before **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, we will hold a public hearing. Please refer to SUPPLEMENTARY INFORMATION for additional information on the comment period and the public hearing.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-OAR-2015-0468, to the *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit <http://www.epa.gov/dockets/comments.html> for instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/comments.html>.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil (Butch) Stackhouse, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail code C539-01, Research Triangle Park, NC 27711, telephone (919) 541-5208; fax number: (919) 541-5315; email address: stackhouse.butch@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include states (typically state air pollution control agencies), the District of Columbia and, in some cases, tribal governments. In particular, 26 states¹ with areas designated nonattainment and classified as “Marginal” for the 2008 ozone NAAQS and the District of Columbia are affected by this action. Entities potentially affected indirectly by this proposal include owners and operators of sources of volatile organic compounds (VOC) and nitrogen oxides (NO_x) emissions that contribute to ground-level ozone formation within the subject ozone nonattainment areas.

B. What should I consider as I prepare my comments for the EPA?

1. Submitting CBI. Do not submit this information to the EPA through <http://www.regulations.gov> or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to the EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

2. Tips for Preparing Your Comments. When submitting comments, remember to:

¹ AR, AZ, CA, CO, CT, DE, GA, IL, IN, KY, LA, MA, MD, MO, MS, NC, NJ, NY, OH, PA, SC, TN, TX, VA, WI and WY.

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

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

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

D. What information should I know about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long at (919) 541-0641 before 5 p.m. on **[INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If requested, further details concerning a public hearing for this proposed rule will be published in a separate *Federal Register* document. For updates and additional information on a public hearing, please

check the EPA's website for this rulemaking at

<http://www.epa.gov/airquality/ozonepollution/actions.html#impl>.

E. How is this preamble organized?

The information presented in this preamble is organized as follows.

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II. Overview and Basis of Proposal

A. *Overview of Proposal*

CAA section 181(b)(2) requires the EPA Administrator to determine, based on an area's design value (which represents air quality in the area for the most recent 3 year period)² as of an area's attainment deadline, whether an ozone nonattainment area attained the ozone standard by that date. The statute provides a mechanism by which states that meet certain criteria may request and be granted by the EPA Administrator a 1-year extension of an area's attainment deadline. The CAA also requires that areas that have not attained the standard by their attainment deadlines be reclassified to either the next "highest" classification (e.g., Marginal to Moderate, Moderate to Serious, etc.) or to the classifications applicable to the areas' design values in Table 1 of 40 CFR 51.1103. In this document, the EPA proposes to find that 17 Marginal areas attained the 2008 NAAQS by the applicable deadline of July 20, 2015, based on complete, quality-assured and certified ozone monitoring data for 2012-2014³. The EPA also proposes to find that 8 Marginal areas meet the criteria, as provided in CAA section 181(a)(5) and interpreted by regulation at 40 CFR 51.1107, to qualify for a 1-year attainment date extension for the 2008 ozone NAAQS. Finally, the EPA proposes to find that 11 Marginal areas failed to attain the 2008 ozone NAAQS by the applicable Marginal attainment deadline of July 20, 2015, and do not qualify for a 1-year extension. Accordingly, as required by CAA section 181(b)(2)(A), if the EPA finalizes the determinations that these areas failed to attain, the EPA must reclassify those

² An area's design value for the 8-hour ozone NAAQS is the highest 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration of all monitors in the area. *See* 40 CFR part 50, appendix P.

³ These proposed determinations of attainment do not constitute a redesignation to attainment. Redesignations require states to meet a number of additional criteria, including EPA approval of a state plan to maintain the air quality standard for 10 years after redesignation.

11 Marginal areas to Moderate. The reclassified areas must attain the 2008 ozone NAAQS as expeditiously as practicable, but no later than July 20, 2018. Table 1 provides a summary of the EPA's proposed actions that would apply to these 36 Marginal areas.

The EPA is proposing in this document to apply the discretion granted to the Administrator in the statute to adjust the statutory deadlines for submitting required SIP revisions for reclassified Moderate ozone nonattainment areas in order to align the SIP due dates with the regulatory deadline for implementing reasonably available control measures (RACT), including reasonably available control technology (RACT), in such areas as necessary to attain the 2008 ozone standard by the Moderate area attainment deadline of July 20, 2018.

Table 1: 2008 Ozone NAAQS Marginal Nonattainment Area Evaluation Summary

2008 NAAQS Nonattainment Area	2012-2014 Design Value (ppm)	Meets 2008 NAAQS by Marginal Attainment date	2014 4 th Highest Daily Maximum 8-hr Average (ppm)	Areas Not Attaining 2008 NAAQS Eligible for Attainment Date Extensions based on 2014 4 th Highest Daily Maximum 8-hr Average ≤0.075 ppm
Allentown-Bethlehem-Easton, PA	0.070	Attaining	0.068	Not applicable
Atlanta, GA	0.077	Not Attaining	0.079	No
Baton Rouge, LA	0.072	Attaining	0.075	Not applicable
Calaveras County, CA	0.071	Attaining	0.071	Not applicable
Charlotte-Gastonia-Rock Hill, NC-SC	0.073	Attaining	0.068	Not applicable
Chicago-Naperville, IL-IN-WI	0.081	Not Attaining	0.076	No
Chico (Butte County), CA	0.074	Attaining	0.074	Not applicable
Cincinnati, OH-KY-IN	0.075	Attaining	0.071	Not applicable
Cleveland-Akron-Lorain, OH	0.078	Not Attaining	0.075	Yes
Columbus, OH	0.075	Attaining	0.070	Not applicable
Denver-Boulder-Greeley-Fort Collins-Loveland, CO	0.082	Not Attaining	0.077	No
Dukes County, MA	0.068	Attaining	0.059	Not applicable
Greater Connecticut, CT	0.080	Not Attaining	0.077	No
Houston-Galveston-Brazoria, TX	0.080	Not Attaining	0.072	Yes
Imperial County, CA	0.080	Not Attaining	0.078	No
Jamestown, NY	0.071	Attaining	0.066	Not applicable
Kern County (Eastern Kern), CA	0.084	Not Attaining	0.089	No
Knoxville, TN	0.067	Attaining	0.064	Not applicable
Lancaster, PA	0.071	Attaining	0.066	Not applicable

2008 NAAQS Nonattainment Area	2012-2014 Design Value (ppm)	Meets 2008 NAAQS by Marginal Attainment date	2014 4 th Highest Daily Maximum 8-hr Average (ppm)	Areas Not Attaining 2008 NAAQS Eligible for Attainment Date Extensions based on 2014 4 th Highest Daily Maximum 8-hr Average ≤0.075 ppm
Mariposa County, CA	0.078	Not Attaining	0.077	No
Memphis, TN-MS-AR	0.073	Attaining	0.067	Not applicable
Nevada County (Western part), CA	0.079	Not Attaining	0.082	No
New York, N. New Jersey-Long Island, NY-NJ-CT	0.085	Not Attaining	0.081	No
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	0.077	Not Attaining	0.074	Yes
Phoenix-Mesa, Arizona	0.080	Not Attaining	0.080	No
Pittsburgh-Beaver Valley, PA	0.077	Not Attaining	0.071	Yes
Reading, PA	0.071	Attaining	0.068	Not applicable
San Diego County, CA	0.079	Not Attaining	0.079	No
San Francisco Bay Area, CA	0.072	Attaining	0.076	Not applicable
San Luis Obispo County (Eastern San Luis Obispo), CA	0.076	Not Attaining	0.073	Yes
Seaford, DE	0.074	Attaining	0.067	Not applicable
Sheboygan, Wisconsin	0.081	Not Attaining	0.072	Yes
St. Louis-St. Charles-Farmington, MO-IL	0.078	Not Attaining	0.072	Yes
Tuscan Buttes, CA	0.075	Attaining	0.076	Not applicable
Upper Green River Basin, WY	0.064	Attaining	0.065	Not applicable
Washington, DC-MD-VA	0.076	Not Attaining	0.069	Yes

B. What is the background for the proposed actions?

On March 12, 2008, the EPA issued its final action to revise the NAAQS for ozone to establish new 8-hour standards (73 FR 16436, March 27, 2008). In that action, we promulgated identical revised primary and secondary ozone standards, designed to protect public health and welfare, that specified an 8-hour ozone standard of 0.075 parts per million (ppm).⁴ Specifically, the standards require that the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration may not exceed 0.075 ppm. The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997 but is set at a level that is more protective of public health and the environment.

⁴ Since the 2008 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as “the 2008 ozone NAAQS” or “the 2008 ozone standard.”

On April 30, 2012 (May 31, 2012), the EPA issued rules designating 46 areas throughout the country as nonattainment for the 2008 ozone NAAQS, effective July 20, 2012 (77 FR 30088, May 21, 2012 and 77 FR 34221, June 11, 2012). In April 30, 2012, action, the EPA established classifications for the designated nonattainment areas, and classified 36 of those areas as Marginal. We used primarily certified air quality monitoring data from calendar years 2008–2010⁵ to designate these areas as nonattainment, and as the basis for their classification (77 FR 30088 and 77 FR 34221). Also in the April 30, 2012, action, the EPA promulgated a Classifications Rule that specified some of the requirements for implementing the 2008 ozone NAAQS under the provisions of Subpart 2 of part D of title I of the CAA to the newly designated nonattainment areas for the 2008 ozone standard (77 FR 30160, May 21, 2012). CAA Section 181 provides that the attainment deadline for ozone nonattainment areas is “as expeditiously as practicable” but no later than the prescribed dates that are provided in Table 1 of that section. In the 2008 ozone NAAQS Classifications Rule, the EPA translated the “maximum” deadlines in Table 1 of Subpart 2 for purposes of the 2008 standard by measuring those deadlines from the effective date of the new designations, but extended those deadlines by several months to December 31 of the corresponding calendar year (77 FR 30166).

Pursuant to a challenge of the EPA’s interpretation of the attainment deadlines, on December 23, 2014, the D.C. Circuit issued a decision rejecting, among other things, the Classifications Rule’s attainment deadlines for the 2008 ozone nonattainment areas, finding that the EPA did not have statutory authority under the CAA to extend those deadlines to the end of

⁵ In certain cases, states included as part of their designation recommendations a request that the EPA consider more up-to-date monitoring data from 2009–2011 in making final designation decisions. The EPA considered the state requests, and, accordingly, adjusted some of the classifications based on the more recent data.

the calendar year. *NRDC v. EPA*, 777 F.3d 456, 464-69 (D.C. Cir. 2014). Accordingly, as part of the final 2008 ozone NAAQS SIP Requirements Rule (80 FR 12264, March 6, 2015), the EPA modified the maximum attainment dates for all nonattainment areas for the 2008 ozone NAAQS, consistent with the court's decision. As relevant here, the SIP Requirements Rule established a maximum deadline for Marginal nonattainment areas of 3 years from the effective date of designation, or July 20, 2015, to attain the 2008 ozone NAAQS. *See* 80 FR at 12268; 40 CFR 51.1103.

C. What is the statutory authority for the proposed actions?

The statutory authority for the actions proposed in this document is provided by the CAA, as amended (42 U.S.C. 7401 et seq.). Relevant portions of the CAA include, but are not necessarily limited to, sections 181(a)(5) and 181(b)(2).

By way of background, CAA section 107(d) provides that when the EPA establishes or revises a NAAQS, the agency must designate areas of the country as nonattainment, attainment, or unclassifiable based on whether they are not meeting (or contributing to air quality in a nearby area that is not meeting) the NAAQS, meeting the NAAQS, or cannot be classified as meeting or not meeting the NAAQS, respectively. Subpart 2 of part D of title I of the CAA governs the classification, state planning and emissions control requirements for any areas designated as nonattainment for a revised primary ozone NAAQS. In particular, CAA section 181(a)(1) requires each area designated as nonattainment for a revised ozone NAAQS to be “classified” at the same time as the area is designated based on the severity of the ozone level in the area (as determined based on the area’s “design value,” which represents air quality in the area for the most recent 3 years). *See* footnote 2. Classifications for ozone nonattainment areas range from “Marginal” (for areas with monitored ozone levels just exceeding the level of the NAAQS) to

“Extreme” (for areas with monitored ozone levels well above the levels of the NAAQS). CAA section 182 stipulates the specific attainment planning and additional requirements that apply to each ozone nonattainment area based on its classification. CAA section 182, as interpreted by the EPA’s implementation regulations at 40 CFR 51.1108-1117, also establishes the timeframes by which air agencies must submit SIP revisions to address the applicable attainment planning elements, and the timeframes by which ozone nonattainment areas must attain the relevant NAAQS.

Section 181(b)(2)(A) of the CAA requires that within 6 months following the applicable attainment date, the Administrator will determine whether an ozone nonattainment area attained the ozone standard based on the area’s design value as of that date. Section 181(a)(5) of the CAA gives the Administrator the discretion to grant a 1-year extension of the attainment date specified in CAA section 181(a) upon application by any state if: (i) the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and (ii) no more than one measured exceedance of the NAAQS for ozone has occurred in the area preceding the extension year. The EPA may grant a second 1-year extension if these same criteria are met by the end of the first extension year.⁶

Because CAA section 181(a)(5)(B) was written for an exceedance-based standard, such as the 1-hour ozone NAAQS, the EPA has interpreted through notice-and-comment rulemaking the air quality requirement of the extension criteria for purposes of a concentration-based standard like the 2008 8-hour ozone NAAQS. For purposes of determining an area’s eligibility for an attainment date extension for the 2008 ozone NAAQS, the EPA has interpreted the criteria

⁶ The EPA considers the average of the annual fourth-highest daily maximum 8-hour ozone concentrations for 2 years at each monitoring site in an area.

of CAA section 181(a)(5)(B) to mean that an area's fourth highest daily maximum 8-hour value for the attainment year⁷ is at or below the level of the standard [80 FR 12264, 12292 (March 6, 2015); 40 CFR 51.1107].

In the event an area fails to attain the relevant ozone NAAQS by the applicable attainment date, CAA section 181(b)(2)(A) requires the Administrator to make the determination that an ozone nonattainment area failed to attain the ozone standard by the applicable attainment date, and subsequently requires the area to be reclassified by operation of law 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 required *Federal Register* document.⁸ Section 181(b)(2)(B) requires the EPA to publish a document in the *Federal Register* identifying the reclassification status of an area that has failed to attain the standard by its attainment date no later than 6 months after the attainment date, which in the case of the Marginal nonattainment areas addressed in this document would be January 20, 2016.

Once an area is reclassified, the EPA must address the schedule by which the state is required to submit a revised SIP for that area to, among other things, demonstrate how the area will attain the relevant NAAQS as expeditiously as practicable but no later than the new applicable attainment date under the statute. According to CAA section 182(i), a state with a reclassified ozone nonattainment area must submit the applicable attainment plan requirements "according to the schedules prescribed in connection with such requirements" in CAA section 182(b) for Moderate areas, section 182(c) for Serious areas, and section 182(d) for Severe areas.

⁷ See 40 CFR 51.1107(a)(1).

⁸ All of the affected nonattainment areas addressed in this document would be classified to the next highest classification of Moderate. None of the affected areas has a design value that would otherwise place it in a higher classification (e.g., Serious) under CAA section 181(b)(2)(A)(ii).

However, the Act permits the Administrator to adjust the statutory due dates that would otherwise apply for any SIP revisions required as a result of the reclassification “to the extent that such adjustment is necessary or appropriate to assure consistency among the required submissions.”

D. How does the EPA determine whether an area has attained the 2008 ozone standard?

Under EPA regulations at 40 CFR part 50, appendix P, the 2008 ozone NAAQS is attained at a site when the 3-year average of the annual fourth highest daily maximum 8-hour average ambient air quality ozone concentration is less than or equal to 0.075 ppm. This 3-year average is referred to as the design value. When the design value is less than or equal to 0.075 ppm at each ambient air quality monitoring site within the area, then the area is deemed to be meeting the NAAQS. The rounding convention under 40 CFR part 50, appendix P, dictates that concentrations shall be reported in ppm to the third decimal place, with additional digits to the right being truncated. Thus, a computed 3-year average ozone concentration of 0.076 ppm is greater than 0.075 ppm and, therefore, over the standard.

The EPA’s determination of attainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in the EPA’s Air Quality System database (formerly known as the Aerometric Information Retrieval System). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of required monitoring days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined according to Appendix P of part 50.

III. What is the EPA proposing and what is the rationale?

The EPA is issuing this proposal pursuant to the agency's statutory obligation under CAA section 181(b)(2) to determine whether the 36 Marginal ozone nonattainment areas have attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015. The separate actions being taken in this proposal, as well as the rationale for these actions, are described in the sections below.

A. *Determinations of Attainment*

The EPA evaluated data from air quality monitors in the 36 Marginal nonattainment areas for the 2008 ozone NAAQS in order to determine the areas' attainment status as of the applicable attainment date of July 20, 2015. The data were supplied and quality assured by state and local agencies responsible for monitoring ozone air monitoring networks. Seventeen of the 36 nonattainment areas' monitoring sites with valid data had a design value equal to or less than 0.075 ppm based on the 2012-2014 monitoring period. Thus, the EPA proposes to determine, in accordance with section 181(b)(2)(A) of the CAA and the provisions of the SIP Requirements Rule (40 CFR 51.1103), that these 17 areas (listed in Table 2 below) attained the standard by the applicable attainment date for Marginal nonattainment areas for the 2008 ozone NAAQS. The EPA's determination is based upon 3 years of complete, quality-assured and certified data. Table 2 displays the 2012-2014 design value for these 17 areas. The fourth high values for each of the 3 years used to calculate each monitor's 2012-2014 design value are provided in the technical support document (TSD) in the docket for this action.⁹ The EPA is soliciting comments on these proposed determinations of attainment by the applicable attainment date.

⁹ *“Technical Support Document Regarding Ozone Monitoring Data – Determinations of Attainment, 1-Year Attainment Date Extensions, and Reclassifications for Marginal Areas under*

Table 2: Marginal Nonattainment Areas that Attained the 2008 Ozone NAAQS by the July 20, 2015, Attainment Date

2008 Ozone NAAQS Nonattainment Area	2012-2014 Design Value (ppm)
Allentown-Bethlehem-Easton, PA	0.070
Baton Rouge, LA	0.072
Calaveras County, CA	0.071
Charlotte-Rock Hill, NC-SC ^a	0.073
Chico (Butte County), CA	0.074
Cincinnati, OH-KY-IN	0.075
Columbus, OH	0.075
Dukes County, MA	0.068
Jamestown, NY	0.071
Knoxville, TN ^b	0.067
Lancaster, PA	0.071
Memphis, TN-MS-AR	0.073
Reading, PA	0.071
San Francisco Bay Area, CA	0.072
Seaford, DE	0.074
Tuscan Buttes, CA	0.075
Upper Green River Basin, WY	0.064

^a On July 28, 2015, the EPA redesignated to attainment the North Carolina portion of the Charlotte-Rock Hill, NC-SC, nonattainment area for the 2008 8-hour ozone NAAQS, effective August 27, 2015. *See* 80 FR 44873. Given that this area was still designated nonattainment as of July 20, 2015, the EPA is herein proposing to determine that this area attained the 2008 ozone NAAQS by the applicable attainment date in order to satisfy the agency's obligation under CAA section 181(b)(2)(A) to make determinations of attainment for nonattainment areas within 6 months following an area's applicable attainment date.

^b On July 13, 2015, the EPA redesignated to attainment the Knoxville, TN, nonattainment area for the 2008 8-hour ozone NAAQS, effective August 12, 2015. *See* 80 FR 39970. Given that this area was still designated nonattainment as of July 20, 2015, the EPA is herein proposing to determine that this area attained the 2008 ozone NAAQS by the applicable attainment date in order to satisfy the agency's obligation under CAA section 181(b)(2)(A) to make determinations of attainment for nonattainment areas within 6 months following an area's applicable attainment date.

B. Extension of Marginal Area Attainment Dates

the 2008 8-Hour Ozone National Ambient Air Quality Standard (NAAQS), EPA-HQ-OAR-2015-0468.

Of the 36 Marginal nonattainment areas for the 2008 ozone NAAQS, there are eight areas for which the EPA is proposing to grant a 1-year attainment date extension based on determinations that these areas have met the requirements for an extension under CAA section 181(a)(5).

Specifically, for each of the eight nonattainment areas, the EPA received a letter from a state air agency requesting a 1-year extension of the area's attainment date and certifying that the state is in compliance with the applicable implementation plan, as required under CAA section 181(a)(5)(A). In their requests, the states certified that they have complied with all requirements and commitments pertaining to their respective nonattainment areas in the applicable implementation plan and that all monitors in the area have a fourth highest daily maximum 8-hour average of 0.075 ppm or less for 2014 (i.e., the last full year of air quality data prior to the July 20, 2015, attainment date). A summary of the information in these letters is provided in the TSD for this action. The EPA evaluated the information submitted by each state for its nonattainment area(s) and is proposing determinations that each state has met the requirement of CAA section 181(a)(5)(A) for each applicable area.¹⁰

The EPA has also evaluated the certified air quality monitoring data for 2014 and is proposing to determine that each of the eight areas listed in Table 3 meets the air quality requirements of CAA section 181(a)(5)(B) and the EPA's interpretation of that statutory

¹⁰ The EPA notes that while Delaware did not submit a letter requesting a 1-year attainment date extension for the multi-state Philadelphia nonattainment area, based on extension requests from the other states with jurisdiction over that area, including Pennsylvania, New Jersey, and Maryland, and the EPA's own analysis of the CAA section 181(a)(5)(A) criteria with regard to Delaware, the EPA is exercising its discretion to propose granting the Philadelphia area a 1-year extension of the attainment date.

provision in 40 CFR 51.1107. As explained in Section II.C of this preamble, the EPA has interpreted the air quality criterion in CAA section 181(a)(5)(B) for purposes of the 2008 8-hour standard to mean that an eligible area’s fourth highest daily maximum 8-hour average in the year preceding the attainment date is equal to or below the NAAQS (80 FR 12292). The EPA has evaluated the data for these eight areas and has determined that the fourth highest daily maximum 8-hour average for each area in 2014 is equal to or below 0.075 ppm. Table 3 provides the fourth highest daily maximum 8-hour averages for 2014 for each of the eight Marginal nonattainment areas for which a state has requested an attainment date extension.

Based on the EPA’s evaluation and determination that eight Marginal nonattainment areas for the 2008 ozone NAAQS that failed to attain the NAAQS by July 20, 2015, have met the attainment date extension criteria of CAA section 181(a)(5), the EPA is exercising its discretion to propose granting a 1-year extension of the applicable Marginal area attainment date to July 20, 2016, from July 20, 2015, for the nonattainment areas listed in Table 3. If this proposal is finalized, then the nonattainment areas would remain classified as Marginal for the 2008 ozone NAAQS unless and until the EPA makes a determination that the areas have not attained the NAAQS by the July 20, 2016, attainment date. The EPA is soliciting comments on this proposal.

Table 3: Marginal Nonattainment Areas that Qualify for a 1-Year Attainment Date Extension for the 2008 Ozone NAAQS^a

2008 Ozone NAAQS Nonattainment Area	2012-2014 Design Value (ppm)	2014 4 th Highest Daily Maximum 8-hr Average (ppm)
Cleveland-Akron-Lorain, OH	0.078	0.075
Houston-Galveston-Brazoria, TX	0.080	0.072
Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE	0.077	0.074
Pittsburgh-Beaver Valley, PA	0.077	0.071
San Luis Obispo County (Eastern part), CA	0.076	0.073
Sheboygan, WI	0.081	0.072

St. Louis-St. Charles-Farmington, MO-IL	0.078	0.072
Washington, DC-MD-VA	0.076	0.069

^a The areas listed are Marginal nonattainment areas that did not attain the 2008 ozone standard by July 20, 2015, but qualify for an extended attainment date to July 20, 2016, under CAA section 181(a)(5).

C. Determinations of Failure to Attain and Reclassification

The EPA is proposing to determine that 11 Marginal nonattainment areas (listed in Table 4) have failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015. These areas are not eligible for a 1-year attainment date extension because the fourth highest daily maximum 8-hour average for at least one monitor in each area is greater than 0.075 ppm for 2014 (i.e., last full year of air quality data prior to the July 20, 2015, attainment date). Each of these areas failed to attain because the 2012-2014 design value for at least one monitor in each area exceeded the 2008 ozone NAAQS of 0.075 ppm. The TSD for this action shows all monitoring data for the relevant years for each of these nonattainment areas, as well as the 3-year design value calculations for each area.

CAA section 181(b)(2)(A) provides that a Marginal nonattainment area shall be reclassified by operation of law upon a determination by the EPA that such area failed to attain the relevant NAAQS by the applicable attainment date. Based on quality-assured ozone monitoring data from 2012-2014, as provided in the TSD for this proposal, the new classification applicable to each of these 11 areas would be the next higher classification of “Moderate” under the CAA statutory scheme.¹¹

¹¹ The 2012-2014 design value for each of the 11 areas does not exceed 0.100 ppm, which is the threshold for reclassifying an area to Serious per CAA section 181(b)(2)(A)(ii) and 40 CFR 51.1103.

Moderate nonattainment areas are required to attain the standard “as expeditiously as practicable” but no later than 6 years after the initial designation as nonattainment (which, in the case of these 11 areas, is July 20, 2018). The attainment deadlines associated with each classification are prescribed by the Act and codified at 40 CFR 51.1103.

We also note that the states with areas that attain the 2008 ozone NAAQS after they are reclassified to Moderate can use the EPA’s existing Clean Data Policy. The state with areas attaining the NAAQS could also submit a complete redesignation request with a maintenance plan to the EPA prior to the SIP revision deadline that uses the EPA’s redesignation guidance.¹²

There are a number of significant emission reduction programs that will lead to reductions of ozone precursors, and that are in place today or are expected to be in place by 2017 to meet the July 20, 2018 attainment date for the 2008 ozone NAAQS Moderate areas. Examples of such rules include state and federal implementation plans adopted under the Cross-State Air Pollution Rule (CSAPR), the regional haze rule and the Best Available Retrofit Technology (BART) requirements, as well as regulations controlling on-road and non-road engines and fuels, Tier 3 motor vehicle emission and fuel standards program,¹³ hazardous air pollutant rules for utility and industrial boilers, and various other programs already adopted by states to reduce emissions from key emissions sources. Further, states and the EPA are currently evaluating interstate transport obligations addressing CAA 110(a)(2)(D)(i)(I) requirements for this NAAQS, and the state or federal plans that are adopted to satisfy these obligations will provide a level of

¹² Details on the EPA’s existing Clean Data Policy and redesignation guidance are available at <http://www.epa.gov/air/urbanair/sipstatus/policy.html>.

¹³ 79 FR 23414 (April 29, 2014). Control of Air Pollution From Motor Vehicles: Tier 3 Motor Vehicle Emission and Fuel Standards

additional emission reductions from upwind states that will further assist each nonattainment area in attaining the ozone NAAQS by the Moderate attainment area deadline.

Table 4: Marginal Nonattainment Areas that Will Be Reclassified as Moderate Because They Did Not Attain the 2008 Ozone NAAQS by the July 20, 2015, Attainment Date

2008 Ozone NAAQS Nonattainment Area	2012-2014 Design Value (ppm)	2014 4th Highest Daily Maximum 8-hr Average (ppm)
Atlanta, GA	0.077	0.079
Chicago-Naperville, IL-IN-WI	0.081	0.076
Denver-Boulder-Greeley-Fort Collins-Loveland, CO	0.082	0.077
Greater Connecticut, CT	0.080	0.077
Imperial County, CA	0.080	0.078
Kern County (Eastern Kern), CA	0.084	0.089
Mariposa County, CA	0.078	0.077
Nevada County (Western part), CA	0.079	0.082
New York-N. New Jersey-Long Island, NY-NJ-CT	0.085	0.081
Phoenix-Mesa, AZ	0.080	0.080
San Diego County, CA	0.079	0.079

D. Moderate Area SIP Revision Submission Deadline

For each new Moderate ozone nonattainment area, the states responsible for managing air quality in the 11 areas identified in Table 4 will be required to submit a revised SIP that addresses the CAA’s Moderate nonattainment area requirements, as interpreted and described in the final SIP Requirements Rule for the 2008 ozone NAAQS. *See* 40 CFR 51.1100 *et seq.* Those requirements include: (1) an attainment demonstration (CAA section 182(b) and 40 CFR 51.1108); (2) provisions for RACT (CAA section 182(b)(2) and 40 CFR 51.1112(a)-(b)) and RACM (CAA section 172(c)(1) and 40 CFR 51.1112(c)); (3) reasonable further progress (RFP) reductions in VOC and/or NOx emissions in the area (CAA sections 172(c)(2) and 182(b)(1) and 40 CFR 51.1110); (4) contingency measures to be implemented in the event of failure to meet a milestone or to attain the standard (CAA section 172(c)(9)); (5) a vehicle inspection and

maintenance program, if applicable (CAA section 181(b)(4) and 40 CFR 51.350); and, (6) NO_x and VOC emission offsets at a ratio of 1.15 to 1 for major source permits (CAA section 182(b)(5) and 40 CFR 51.165(a)). *See also* the requirements for Moderate ozone nonattainment areas set forth in CAA section 182(b) and the general nonattainment plan provisions required under CAA section 172(c).¹⁴

As noted elsewhere in this preamble, when an area is reclassified under CAA section 181(b)(2), CAA section 182(i) directs that the state shall meet the new requirements according to the schedules prescribed in those requirements. It provides, however, “that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.” CAA section 182(b), as interpreted by 40 CFR 51.1100 *et seq.*, describes the required SIP revisions and associated deadlines for a nonattainment area classified as Moderate at the time of the initial designations. However, these SIP submission deadlines (e.g., 3 years after the effective date of designation for submission of an attainment plan and attainment demonstration) have already passed. Accordingly, the EPA is proposing to exercise its discretion under CAA section 182(i) to adjust the SIP submittal deadlines for these 11 new Moderate nonattainment areas.

In determining an appropriate deadline for the Moderate area SIP revisions for these 11 areas, the EPA notes that pursuant to 40 CFR 51.1108(d), for each nonattainment area, the state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area’s attainment date. In the case of

¹⁴ All 11 of the areas reclassified to Moderate except Denver-Boulder-Greeley-Fort Collins-Loveland, CO have been classified Moderate or higher classification for a prior ozone NAAQS.

nonattainment areas classified as Moderate for the 2008 ozone NAAQS, the attainment year ozone season is the 2017 ozone season (40 CFR 51.1100(g)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, appendix D, section 4.1, Table D-3 (October 17, 2006, 71 FR 61236). We note that the EPA has proposed changes to the ozone monitoring season in its most recent proposal to revise the ozone NAAQS (79 FR 75234, December 17, 2014). For the purposes of reclassification for the 11 Marginal nonattainment areas identified in this proposal, Table 5 provides the starting month of the ozone monitoring season for each state with one of the 11 Marginal areas as currently codified in the EPA's regulations. Table 5 also includes the December 17, 2014, proposed changes, if any, to the beginning of the ozone monitoring season in such states. If the proposed changes to the beginning of the ozone monitoring seasons are included in the final ozone NAAQS revision (expected by October 1, 2015), and that rulemaking is finalized before the EPA finalizes this action, the revised ozone season dates would also apply to our adjusted deadlines for the Moderate area SIP revisions for the areas we propose to reclassify in this document. We also note that we believe it is reasonable to provide states with a period of at least approximately 1 year after the reclassification is finalized to develop and submit the Moderate area SIP revisions. This provides time necessary for states and local air districts to finish their review of available control measures, adopt necessary attainment strategies, address other SIP requirements, and complete the public notice process necessary to adopt and submit SIP revisions.

Therefore, the EPA is proposing and taking comment on two options for setting the date by which states with jurisdiction for these 11 reclassified nonattainment areas would be required to submit for EPA review and approval SIP revisions to address Moderate area requirements. The first option, which is reflected in Table 5 below, would require that states submit the

required SIP revisions as expeditiously as practicable, but no later than the beginning of the ozone season in 2017 for each state. This proposed option would align the SIP submittal deadline with the deadline for implementing applicable controls, which, as noted above, is also no later than the beginning of the ozone season in 2017 for each area. This option would give 9 states additional time that may be needed to accomplish planning, administrative and SIP revision processes. This option would treat states consistently in that they would need to have submitted SIP revisions by the beginning of their respective ozone seasons, but it would result in SIP submittal dates that vary among the states. In addition, as noted above, if the EPA finalizes the proposed changes to the start dates of the ozone season in a number of states, the proposed deadlines for SIP revisions in this rulemaking would also change accordingly. Under this first option, in multi-state nonattainment areas, such as the Chicago-Naperville area, where the three affected states do not have the same ozone season start date, the deadline for the entire nonattainment area would be the earliest ozone season start date for any of the states (e.g., April 1, 2017, for the Chicago area).

Table 5 – Beginning of Ozone Season for States with Areas Identified for Reclassification to Moderate for the 2008 Ozone NAAQS

2008 Moderate Ozone Areas	State	Current Month or Date Ozone Season Begins^a	Proposed Deadline for Moderate Area SIP Submittal	Proposed Month or Date Ozone Season Begins^b
Atlanta, GA	Georgia	March	1-Mar-17	No change
Chicago-Naperville, IL-IN-WI	Illinois	April	1-Apr-17	March
Chicago-Naperville, IL-IN-WI	Indiana	April	1-Apr-17	March
Chicago-Naperville, IL-IN-WI	Wisconsin	15-Apr	15-Apr-17	15-Mar
Denver-Boulder-Greeley-Fort Collins-Loveland, CO	Colorado	March	1-Mar-17	January
Greater Connecticut, CT	Connecticut	April	1-Apr-17	March
Imperial County, CA	California	January	1-Jan-17	No change

Kern County (Eastern Kern), CA	California	January	1-Jan-17	No change
Mariposa County, CA	California	January	1-Jan-17	No change
Nevada County (Western part), CA	California	January	1-Jan-17	No change
New York-N. New Jersey-Long Island, NY-NJ-CT	New Jersey	April	1-Apr-17	March
New York-N. New Jersey-Long Island, NY-NJ-CT	New York	April	1-Apr-17	March
New York-N. New Jersey-Long Island, NY-NJ-CT	Connecticut	April	1-Apr-17	March
Phoenix-Mesa, AZ	Arizona	January	1-Jan-17	No change
San Diego County, CA	California	January	1-Jan-17	No change

^a Table D-3 of Appendix D to Part 58—Ozone Monitoring Season by State. First day of beginning month except for WI.

^b Beginning of ozone season proposed in the ozone NAAQS revision proposal (79 FR 75234, December 17, 2014).

Under the second option, the EPA proposes that the deadline for the required SIP revisions for areas that would be reclassified under this rulemaking would be as expeditiously as practicable, but no later than January 1, 2017. By establishing a single specific submittal date, this option would establish a consistent deadline for all 11 areas, similar to the single uniform SIP submission deadline that would have applied to all areas if they had been initially classified as Moderate. A uniform deadline of January 1, 2017, is reasonable because it would provide all states with approximately 1 year after these reclassifications are finalized to develop complete SIP submissions, and it is the latest SIP submittal date that would be compatible with ensuring controls are in place no later than the start of the attainment year ozone season for all of the 11 reclassified areas.

The EPA solicits comments on both of these proposed options for deadlines to submit the required SIP revisions that would apply to states after any current Marginal nonattainment area for the 2008 ozone NAAQS is reclassified to Moderate.

With regard to the New York-N. New Jersey-Long Island (NY-NJ-CT) nonattainment area, the EPA notes that in addition to the actions related to the 2008 ozone standard addressed in this proposed rulemaking, on May 15, 2014, the agency proposed to rescind the clean data determination (CDD) for that nonattainment area under the 1997 8-hour ozone standard because the EPA determined that the area was no longer attaining the 1997 ozone NAAQS (79 FR 27830, “May 2014 proposal document”). The CDD, issued by the EPA in June 2012, suspended the three states’ obligations to meet attainment-related planning requirements for that standard, including submitting attainment demonstrations, RACM, RFP plans, and contingency measures. In the May 2014 proposal document, the EPA proposed to find that the New Jersey, New York, and Connecticut’s SIPs were substantially inadequate to demonstrate attainment of the 1997 ozone NAAQS, and the agency proposed to issue a SIP Call under the authority of CAA section 110(k)(5) requiring the states to submit revised SIPs within 18 months to demonstrate how the New York-N. New Jersey-Long Island nonattainment area would re-attain the 1997 standard as expeditiously as practicable.

One option proposed by the EPA in the May 2014 proposal document would permit the relevant states to respond to the final SIP Call by requesting to be reclassified to Moderate for the 2008 ozone standard (*see* CAA section 181(b)(3)), which would consequently require that the states submit SIPs demonstrating how they would attain the more stringent 2008 standard as expeditiously as practicable. We proposed that this alternative response of submitting an attainment plan for the 2008 ozone standard would satisfy a final SIP Call on the 1997 ozone standard because an approvable plan would demonstrate compliance with a more stringent NAAQS.

The public comment period for the May 2014 proposal document closed on June 16, 2014, and the EPA is reviewing comments received on the proposal. However, given that this action proposes to find that the New York-N. New Jersey-Long Island nonattainment area has failed to attain the 2008 ozone standard by its Marginal attainment date of July 20, 2015, and must be reclassified to Moderate by operation of law in accordance with CAA section 181(b)(2)(A), this proposed action would effectively eliminate the need for the three affected states to request reclassification for the area under the option described in the May 2014 proposal document. Although we are not taking final action in this document on the proposed CDD rescission and SIP Call (79 FR 27830), the actions which may occur pursuant to this proposal (i.e., a final finding of failure to attain the 2008 standard by the applicable attainment date, reclassification of the area as Moderate, and a state submittal of a Moderate area attainment demonstration) would, thus, also serve to satisfy a final SIP Call under CAA section 110(k)(5). We also note that either of the 2008 ozone attainment plan due dates proposed in this document would meet the statutory timeframe for the SIP revision due subsequent to a SIP Call for the 1997 ozone NAAQS for the area.

E. Summary of Proposed Actions

The actions proposed in this document affect the 36 nonattainment areas for the 2008 ozone NAAQS that were initially designated and classified Marginal effective July 20, 2012, based on their individual design values. The design value of an area is represented by the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor in the area, averaged over a consecutive 3-year period. According to CAA section 181(a)(1), as interpreted by EPA regulations at 40 CFR 51.1103, nonattainment Marginal areas are required to attain the standard “as expeditiously as practicable” but no later than 3 years after the designation

effective date of July 20, 2012 (i.e., no later than July 20, 2015). CAA section 181(b)(2)(A) requires that within six months of the attainment date, which, in the case of the Marginal areas that are the subject of this document, was July 20, 2015, the EPA must determine, based on the ozone nonattainment area's design value as of the attainment date, whether the area attained the ozone standard by that date. A Marginal nonattainment area has attained the 2008 ozone NAAQS by the attainment date if its design value is equal to or less than 0.075 ppm based on data from the period 2012-2014. If the EPA determines that an area has failed to attain by its attainment date, CAA section 181(b)(2) requires that those areas be reclassified to the higher of (i) the next highest classification, or (ii) the classification that corresponds with the area's design value as of the time that the EPA publishes the document identifying the areas that have failed to attain by their attainment date. Accordingly, the EPA is proposing that the following 11 Marginal nonattainment areas failed to attain the 2008 ozone NAAQS by July 20, 2015, and must be reclassified as Moderate: Atlanta, GA; Chicago-Naperville, IL-IN-WI; Denver-Boulder-Greeley-Fort Collins-Loveland, CO; Greater Connecticut, CT; Imperial County, CA; Kern County (Eastern Kern), CA; Mariposa County, CA; Nevada County (Western part), CA; New York-N. New Jersey-Long Island, NY-NJ-CT; Phoenix-Mesa, AZ; and, San Diego County, CA. For these 11 areas, the EPA is further proposing that the responsible states must submit SIP revisions to fulfill the CAA's Moderate area requirements by one of the following two alternative deadlines: Option 1 - as expeditiously as practicable but not later than the start of each nonattainment area's 2017 ozone season; Option 2 – as expeditiously as practicable but not later than January 1, 2017. The EPA is taking comment on the determinations of failure to attain and subsequent reclassifications of each of these 11 nonattainment areas from Marginal to Moderate, and on an

appropriate deadline for responsible states to submit SIP revisions to fulfill Moderate area requirements for these areas.

Upon application by any state, the Administrator may extend the 2008 ozone attainment date by 1 year, in accordance with CAA section 181(a)(5) and 40 CFR 51.1107, provided that the state has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and the area's fourth highest daily maximum 8-hour average value for the last full year of air quality data prior to the July 20, 2015, attainment date (i.e., 2014) is at or below 0.075 ppm. Based on state requests and a review of 2014 ozone air quality data, the EPA is proposing to grant 1-year extensions of the attainment date to July 20, 2016 (from July 20, 2015) for the following eight Marginal nonattainment areas: Cleveland-Akron-Lorain, OH; Houston-Galveston-Brazoria, TX; Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE; Pittsburgh-Beaver Valley, PA; San Luis Obispo County (Eastern part), CA; Sheboygan, WI; St. Louis-St. Charles-Farmington, MO-IL; and, Washington, DC-MD-VA. The EPA is taking comment on the 1-year attainment date extensions for each of these eight areas.

For the 17 remaining 2008 ozone NAAQS nonattainment areas currently classified as Marginal, the EPA is proposing to determine that each area has ozone design values for the 2012-14 period at or below 0.075 ppm, and, thus, each area has attained the NAAQS by the attainment date of July 20, 2015. The 17 areas are: Allentown-Bethlehem-Easton, PA; Baton Rouge, LA; Calaveras County, CA; Charlotte-Gastonia-Rock Hill, NC-SC; Chico (Butte County), CA; Cincinnati, OH-KY-IN; Columbus, OH; Dukes County, MA; Jamestown, NY; Knoxville, TN; Lancaster, PA; Memphis, TN-MS-AR; Reading, PA; San Francisco Bay Area, CA; Seaford, DE; Tuscan Buttes, CA; and, Upper Green River Basin, WY. The EPA is taking

comment on the determinations of attainment by the applicable attainment date for these 17 areas.

IV. Environmental Justice Considerations

The CAA requires that states with areas designated as nonattainment submit to the Administrator the appropriate SIP revisions and implement specified control measures by certain dates applicable to the area's classification. By requiring additional planning and implementation requirements for the 11 nonattainment areas proposed to be reclassified from Marginal to Moderate, the part of this action reclassifying the areas from Marginal to Moderate will protect all those residing, working, attending school, or otherwise present in those areas regardless of minority or economic status.

V. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action and was, therefore, not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

The information collection activities associated with this proposed rule were submitted for approval to the OMB under the PRA as part of the information collection assessment for the 2008 ozone NAAQS SIP Requirements Rule. The Information Collection Request (ICR) document prepared by the EPA has been assigned the EPA ICR number 2347.01. You can find a copy of the ICR in the docket for the 2008 ozone NAAQS SIP Requirements Rule¹⁵ (EPA-HQ-

¹⁵ 80 FR 12264, March 6, 2015.

OAR-2010-0885), and in the docket for this rule (EPA-HQ-OAR-2015-0468). The ICR is briefly summarized here.

The EPA issued the 2008 ozone NAAQS SIP Requirements Rule to provide states with assistance in interpreting how CAA requirements apply to their nonattainment areas when the states develop their SIPs for attaining and maintaining the 2008 ozone NAAQS. The intended effect of the SIP Requirements Rule — in conjunction with other rules that address additional aspects of implementation, such as this proposed action — is to provide assistance to states regarding their planning obligations such that states may begin SIP development. In preparing its analysis of the estimated paperwork burden associated with the SIP Requirements Rule and additional rules providing clarity on implementation of the 2008 ozone NAAQS, the EPA calculated that burden for the 46 areas designated non-attainment under that standard.^{16,17} The estimate in the ICR included the assumption that 10 nonattainment areas originally classified as Marginal would require reclassification to Moderate after the July 20, 2015, attainment date for Marginal nonattainment areas. If this proposed action is finalized, 11 nonattainment areas originally classified as Marginal would be reclassified to Moderate. Therefore, we believe that the original estimate in the ICR has fairly quantified the information collection activities that will be associated with the 11 areas we proposed to reclassify in this action. Upon finalization of the reclassification to Moderate, the states with jurisdiction over the 11 areas will be required to prepare an attainment demonstration as well as submit SIP revisions for purposes of meeting RFP requirements and RACT. The attainment demonstration requirement is codified at 40 CFR 51.908, which implements CAA subsections 172(c)(1), 182(b)(1)(A) and 182(c)(2)(B). The RFP

¹⁶ 77 FR 30088, May 21, 2012.

¹⁷ 77 FR 34227, June 11, 2012.

SIP submission requirement is codified at 40 CFR 51.910, which implements CAA subsections 172(c)(2) and 182(b)(1)(A), and the RACT SIP submission requirement is codified at 40 CFR 51.912, which implements CAA subsections 172(c)(1) 182(b)(2),(c),(d) and (e).

States should already have information from emission sources, as facilities should have provided this information to meet 1-hour and 1997 8-hour ozone NAAQS SIP requirements, operating permits and/or emissions reporting requirements. Such information does not generally reveal the details of production processes. But, to the extent it may, CBI for the affected facilities is protected. Specifically, submissions of emissions and control efficiency information that is confidential, proprietary and trade secret is protected from disclosure under the requirements of subsections 503(e) and 114(c) of the CAA.

The annual burden for the information collection associated with all 46 nonattainment areas, averaged over the first 3 years of the ICR, was estimated to be a total of 120,000 labor hours per year at an annual labor cost of \$2.4 million (present value) over the 3-year period, or approximately \$91,000 per state for the 25 state respondents and the District of Columbia. The average annual reporting burden is 690 hours per response, with approximately two responses per state for 58 state responses.¹⁸ There are no capital or operating and maintenance costs associated with the SIP Requirements Rule's or this proposed rule's requirements. Burden is defined at 5 CFR 1320.3(b).

¹⁸ State responses are the number of SIP revisions required from the respective states to satisfy their 2008 ozone nonattainment requirements. Due to an oversight in the original submitted ICR, the estimated number of state responses (58) does not include the one required SIP revision for the Mississippi portion of the multi-state Memphis nonattainment area.

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 the EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The comment period on the agency's need for this information ran from June 6, 2013, to August 5, 2013.¹⁹ No comments were received on the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden. The EPA public docket for this rule includes the ICR approved in conjunction with the 2008 ozone NAAQS SIP Requirements Rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The proposed determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the proposed determination to grant 1-year attainment date extensions do not in and of themselves create any new requirements beyond what is mandated by the CAA. Instead, this rulemaking only makes factual determinations, and does not directly regulate any entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

¹⁹ 78 FR 34178, June 6, 2013.

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. The EPA has identified a number of tribal areas implicated in the 36 areas covered by the EPA's proposed determinations of attainment and failure to attain the 2008 ozone NAAQS (and resulting reclassifications), and the proposed determination to grant 1-year attainment date extensions. We intend to communicate with potentially affected tribes located within the boundaries of the nonattainment areas for the 2008 ozone NAAQS as we move forward in developing a final rule.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of "covered regulatory action" in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations. The results of this evaluation are contained in the section of the preamble titled “Environmental Justice Considerations.”

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: August 19, 2015.

Janet G. McCabe,
Acting Assistant Administrator.
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