

The EPA Administrator, E. Scott Pruitt, signed the following notice on 03/01/2018, and EPA is submitting it for publication in the *Federal Register* (FR). While we have taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of compliance. Please refer to the official version in a forthcoming FR publication, which will appear on the Government Printing Office's FDSys website (<http://gpo.gov/fdsys/search/home.action>) and on Regulations.gov (<http://www.regulations.gov>) in Docket No. EPA-HQ-OAR-2016-0202. Once the official version of this document is published in the FR, this version will be removed from the Internet and replaced with a link to the official version.

6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 50 and 51

[EPA-HQ-OAR-2016-0202; FRL-XXXX-OAR]

RIN 2060-AT41

Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this final rule, the EPA is establishing the air quality thresholds that define the classifications assigned to all nonattainment areas for the 2015 ozone national ambient air quality standards (NAAQS) (the “2015 ozone NAAQS”) promulgated on October 1, 2015. This final rule also establishes the timing of attainment dates for each nonattainment area classification.

DATES: This final rule is effective on **[INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action, identified by Docket ID No.

EPA-HQ-OAR-2016-0202. All documents in the docket are listed in the

<http://www.regulations.gov> Web site. Although listed in the index, some information may not be publicly available, *e.g.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available electronically in <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: For further general information on this rule, contact Mr. Robert Lingard, Office of Air Quality Planning and Standards (OAQPS), Air Quality Policy Division, U.S. EPA, Mailcode 539-01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; by telephone at (919) 541-5272; or by email at lingard.robert@epa.gov; or Mr. Butch Stackhouse, OAQPS, Air Quality Policy Division, U.S. EPA, Mailcode 539-01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; by telephone at (919) 541-5208; or by email at stackhouse.butch@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected directly by this final rule include state, local and tribal governments and air pollution control agencies (air agencies) responsible for attainment and maintenance of the ozone NAAQS. Entities potentially affected indirectly by this proposed rule as regulated sources include owners and operators of sources of emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_x) that contribute to ground-level ozone formation.

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

In addition to being available in the docket, an electronic copy of this **Federal Register** document will be posted at <http://www.epa.gov/ozone-pollution>.

C. How is this notice organized?

The information presented in this document is organized as follows:

I. General Information

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II. Background

On October 1, 2015,¹ the EPA promulgated a rule that revised the primary and secondary 8-hour NAAQS for ozone to a level of 0.070 parts per million (ppm).^{2, 3} Revisions to the ozone NAAQS trigger a process set forth in section 107 of the Clean Air Act (CAA or Act), in which

¹ See 80 FR 65292 (October 26, 2015).

² Compliance with the NAAQS is computed based on the annual fourth highest daily maximum 8-hour average concentration, averaged over 3 years. For a detailed explanation of the calculation of the 3-year 8-hour average, see 40 CFR part 50, Appendix P.

³ Since the 2015 primary and secondary NAAQS for ozone are identical, for convenience, we refer to both as "the 2015 ozone NAAQS" or "the 2015 ozone standards."

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states recommend area designations (*i.e.*, as nonattainment, attainment, or unclassifiable with respect to the revised standards) to the EPA, and the EPA then evaluates air quality data and other factors prior to making final area designations. In accordance with CAA section 181(a)(1), an area designated as nonattainment for a revised ozone NAAQS must be classified, at the time of designation, as Marginal, Moderate, Serious, Severe or Extreme, depending on the severity of the ozone air quality problem in that nonattainment area.

On November 17, 2016, the EPA proposed a set of nonattainment area classification thresholds and associated attainment dates, as well as other NAAQS implementation-related provisions including submittal deadlines and specific CAA requirements for the content of nonattainment area and Ozone Transport Region state implementation plans (SIPs), for the 2015 ozone NAAQS (81 FR 81276). With this action, we are finalizing the set of nonattainment area classification thresholds and associated attainment dates, which will apply when the EPA promulgates final nonattainment area designations for the 2015 ozone NAAQS.⁴ The public comment period on the November 17, 2016, notice of proposed rulemaking (NPRM) (November 2016 proposal) ran from November 17, 2016, to February 13, 2017. The EPA received approximately 80 comment submissions on the NPRM, approximately 20 of which addressed the EPA's proposed nonattainment area classifications approach. The preamble to this final classifications rule for the 2015 ozone NAAQS discusses the comments received and how they were considered by the EPA in general terms. The Response to Comments document provides more detailed responses to the comments received. The public comments received on the NPRM

⁴ The EPA intends to finalize, where appropriate, the other portions of the November 17, 2016, proposed rule in a separate action.

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and the EPA's Response to Comment document are posted in the docket at <http://www.regulations.gov> (Docket ID No. EPA-HQ-OAR-2016-0202).

We are taking two actions in this final rule: (1) establishing the air quality thresholds that define each of the five CAA classifications for areas designated nonattainment for the 2015 ozone NAAQS; and (2) establishing the attainment deadline associated with each classification. The EPA also proposed in the November 2016 proposal to apply previous voluntary reclassifications for six areas in California to the revised 2015 ozone NAAQS. Consistent with California's most recent request, EPA intends to finalize these voluntary reclassifications for five areas separately with its final nonattainment area designations for the 2015 ozone NAAQS.

III. Application of Classification Provisions in CAA Section 181 to Nonattainment Areas Subject to Subpart 2 of Part D of Title I of the CAA

A. Background and Summary of the Proposal

1. Background

On November 17, 2016, the EPA proposed numerical ozone air quality thresholds for classifying nonattainment areas for the 2015 ozone NAAQS (81 FR 81283). In accordance with CAA section 181(a)(1), each area designated as nonattainment for the 2015 ozone NAAQS must be classified at the time of designation. Accordingly, the EPA is finalizing classification thresholds on or before the date that it issues final nonattainment area designations.

Under Subpart 2 of part D of title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area's classification. Under subpart 2, ozone nonattainment areas are initially classified based on the severity of their ozone

levels, as determined by the area's design value (DV),⁵ relative to the lower and upper DV thresholds for each classification. Nonattainment areas with a "lower" classification have ozone levels at the time of designation that are closer to the standard than areas with a "higher" classification. Ozone nonattainment areas in the lower classification levels have fewer initial mandatory air quality planning and control requirements than those in higher classifications. Clean Air Act section 181 provides an increasing amount of maximum time from the date of designation to attain the standards for the progressively higher classifications: Marginal - 3 years, Moderate - 6 years, Serious - 9 years, Severe - 15 or 17 years, and Extreme - 20 years.

The CAA provides mechanisms for addressing nonattainment areas that may not be able to attain by the attainment date for their classification, or that fail to attain by that date. CAA section 181(a)(4) provides that within 90 days of designation and classification, the Administrator may exercise discretion to reclassify an area to a higher (or lower) classification if its DV is within 5 percent of the DV range of the higher (or lower) classification. An air agency may also voluntarily request, pursuant to CAA section 181(b)(3), that the EPA reclassify the area to a higher classification. The EPA may not deny and must approve any such voluntary reclassification requests. Once an area is reclassified to a higher classification, it becomes subject to the associated additional planning and control requirements for that higher classification, and must attain the standard no later than the maximum attainment date for that classification. Six nonattainment areas in California were granted voluntary reclassifications for both the 1997 and 2008 ozone NAAQS (77 FR 30165; May 21, 2012), which we proposed in the November 2016

⁵ Annual fourth highest daily maximum 8-hour average ozone concentration, averaged over 3 years. For a detailed explanation of the calculation of the 3-year 8-hour average, *see* 40 CFR part 50, Appendix P.

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proposal to apply for the 2015 ozone NAAQS. Finally, if the EPA determines that an area has failed to attain the standard by the applicable attainment date, CAA section 181(b)(2) requires EPA to reclassify that area to a higher classification (*i.e.*, “bump-up”).

2. Summary of the proposal

For purposes of the 2015 ozone NAAQS, the EPA proposed to retain the “percent-above-the-standard” (PATS) methodology used to establish area classification thresholds for the 1997 and 2008 8-hour ozone NAAQS (81 FR 81283; November 17, 2016). As the EPA explained in our proposal, the PATS approach is rooted in the classification thresholds established for the ozone standard in effect at the time of the 1990 CAA amendments, which was a 1-hour exceedance-based standard of 0.12 ppm.⁶ The classification provisions in Table 1 in section 181 of subpart 2 of the CAA (also referred to herein as the “CAA Table 1”) are specific to that 1-hour standard. The EPA subsequently translated the CAA Table 1 thresholds for purposes of the revised 1997 ozone NAAQS, which were expressed in the form of a 3-year average of annual fourth highest daily maximum 8-hour averages.⁷ Specifically, in the classifications rule for the 1997 8-hour ozone NAAQS, we translated the classification thresholds in CAA Table 1 from 1-hour DVs to 8-hour DVs based on the percentage by which each classification threshold in the table exceeds the 1-hour ozone NAAQS (*i.e.*, percent-above-the-standard, or PATS).⁸

Application of the PATS classification approach for 8-hour ozone NAAQS was challenged in

⁶ For additional discussion on the 1-hour ozone NAAQS and its associated area designations and classifications, *see* 56 FR 56695 (November 6, 1991).

⁷ *See* 69 FR 23954 (April 30, 2004) and 40 CFR Appendix I.

⁸ The upper thresholds of the Marginal, Moderate, Serious and Severe classifications are precise percentages or fractions above the level of the standard, namely 15 percent (3/20ths more than the standard), 33.33 percent (one-third more than the standard), 50 percent (one-half more than the standard), and 133.3 percent (one and one-third more than the standard).

litigation and upheld by the Court. *See South Coast Air Quality Management District v. Environmental Protection Agency*, 472 F.3d 882 (D.C. Cir. 2006) at 896–898. The EPA subsequently retained the PATS approach in its final classifications rule for the 2008 8-hour ozone NAAQS.⁹

The EPA also proposed to retain its current approach in establishing attainment dates for each nonattainment area classification, consistent with CAA Table 1 and the regulatory approach for both the 1997 and 2008 ozone NAAQS (81 FR 81285; November 17, 2016). We proposed that the maximum attainment dates for nonattainment areas in each classification under the 2015 NAAQS are as follows: Marginal - 3 years from effective date of designation; Moderate - 6 years from effective date of designation; Serious - 9 years from effective date of designation; Severe - 15 years (or 17 years) from effective date of designation; and Extreme - 20 years from effective date of designation.

Finally, the EPA proposed to again apply previous voluntary reclassifications for potential nonattainment areas in California to the revised 2015 ozone NAAQS unless the state of California explicitly requested otherwise in their comments to the November 2016 proposal (81 FR 81285).¹⁰ These areas included Los Angeles-South Coast Air Basin, San Joaquin Valley, Riverside County (Coachella Valley), Sacramento Metro, Ventura County and Western Mojave areas. We believe this is an appropriate mechanism to address the situation for these California areas that were voluntarily reclassified for the 1997 ozone NAAQS and previously used this mechanism for the 2008 ozone NAAQS to ensure the areas would have an attainment date for

⁹ *See* 77 FR 30162 (May 21, 2012).

¹⁰ Areas for which California declines voluntary reclassification would be classified at the time of designation for the 2015 ozone NAAQS based on their DV.

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the revised 2015 ozone NAAQS that is no earlier than the area's attainment date for the prior 2008 NAAQS. The EPA proposed this approach in order to minimize burden on the state of California and obviate the need to go through the voluntary reclassification process again.

B. Brief Summary of Comments on the Proposed Rule and the EPA's Responses

The EPA received approximately 20 comment submissions on its proposed approach for establishing nonattainment area classification thresholds for the 2015 ozone NAAQS. A majority (approximately two-thirds) of the commenters supported adoption of the proposed PATS approach, stating that it was consistent with the CAA as well as the method used for classifying nonattainment areas under the 1997 and 2008 ozone NAAQS, and has been upheld in litigation. The other one-third of comments suggested that EPA adopt a different classification approach, as addressed more fully below and in the separate Response to Comments document that is available in the docket for this rulemaking. The EPA received no significant comments regarding its proposed approach in establishing attainment dates for each nonattainment area classification under the 2015 ozone NAAQS.

Comment: Some commenters were concerned that the proposed PATS approach classifies too many areas as Marginal nonattainment areas, and that some of those Marginal areas are unlikely to attain the standard within the 3 years provided by the Act. Commenters pointed out that the EPA's application of the PATS approach to classifications for the 2008 ozone NAAQS resulted in more than half of all Marginal areas failing to achieve timely attainment of that NAAQS by the end of the 2014 ozone season. Because the CAA does not require states with areas classified as Marginal to develop attainment plans or adopt additional controls, commenters argue that states will not impose emission reductions necessary to timely achieve attainment and moreover that some of these Marginal areas contribute pollution to downwind areas that have historically

struggled with attaining the NAAQS due to transported pollution. These commenters advocated alternative classification approaches, such as those considered by the EPA for the prior 2008 ozone NAAQS, that would adjust thresholds to classify more areas as Moderate than the proposed PATS approach. They argue that modifying the EPA's proposed classification approach with the result of increasing the number of Moderate areas would impose needed emissions control requirements, provide a longer, more realistic timeframe to attain the ozone NAAQS, and would equitably require upwind areas that contribute to downwind transport to implement new control measures sooner.

Response: The EPA recognizes that the nonattainment area classification thresholds established in this action would likely result in the vast majority of nonattainment areas being initially classified Marginal for the 2015 ozone NAAQS, subjecting states associated with these areas to fewer mandatory air quality planning and control requirements than would apply in higher classifications. However, as the commenters acknowledge, the PATS approach has “a degree of consistency with Congressional intent” and has withstood judicial review. The EPA previously considered a number of alternative approaches in establishing nonattainment area classification thresholds for the 2008 ozone NAAQS, and commenters suggested that we reexamine those approaches and consider adopting one here, or adopt an entirely new alternative approach.¹¹ We rejected the alternative approaches discussed in the Background Information Document that accompanied the classifications rule for the 2008 ozone NAAQS because we determined that the alternative approaches would introduce more judgement and uncertainty in the threshold

¹¹ Docket No. EPA-HQ-OAR-2010-0885 includes a Background Information Document, titled *Additional Options Considered for Classification of Nonattainment Areas under the 2008 Ozone NAAQS* (January 2012).

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determination process than contemplated by the CAA, and, thus, posed heightened legal risk. We believe the same considerations apply to classifications for areas designated nonattainment for the 2015 ozone NAAQS. As discussed in the November 2016 proposal, the EPA utilized the PATS approach for classifying areas under the 1997 and 2008 8-hour ozone NAAQS, in large part, for its straightforward translation of the classification thresholds established by Congress in CAA Table 1 (81 FR 81283). As noted by commenters, the EPA's original PATS classification approach for the 8-hour ozone NAAQS was challenged in litigation and upheld by the Court. *See South Coast Air Quality Management District v. Environmental Protection Agency*, 472 F.3d 882 (D.C. Cir. 2006) at 896–898. For these reasons, and despite concerns raised by commenters, the EPA is finalizing the PATS approach for classifications of the 2015 ozone NAAQS.

Furthermore, the EPA disagrees that implementation of the 2008 ozone NAAQS was not in keeping with Congress' design simply because many Marginal areas did not attain by their initial attainment deadline. Commenters point out that more than half of all areas originally classified as Marginal did not timely attain, but in fact more than half of all Marginal areas *did* attain by their attainment date, when attainment date extensions are included in the analysis. Of the 36 areas originally classified as Marginal for the 2008 ozone NAAQS, 17 attained by their original attainment date, and 6 additional areas attained by the extended attainment dates authorized under CAA section 181(a)(5).¹² The EPA also does not agree with commenters' suggestion that the EPA should adopt a different classification scheme in order to address what

¹² Eight areas received 1-year extensions of the attainment date under CAA section 181(a)(5), which Congress provided for areas that were making good progress towards achieving the NAAQS and thus had air quality that was just missing the standard. Of those eight areas, two eventually failed to attain by their extended attainment date. The other six areas attained in the year following the original attainment date. Thus, a total of 13 original Marginal areas failed to attain by their applicable attainment date.

they perceive as inequities in the interstate transport of ozone pollution. The statute clearly provides other mechanisms for states and the EPA to address interstate transport, and the EPA has worked in partnership with states to use those mechanisms. *See, e.g., EME Homer City v. EPA*, 696 F.3d 7 (D.C. Cir. 2012), *reversed by EPA v. EME Homer City*, 134 S. Ct. 1584 (2014), *remand addressed in EME Homer City v. EPA*, 795 F.3d 118 (D.C. Cir. 2015) (largely upholding the EPA’s framework for addressing CAA section 110(a)(2)(D) interstate transport obligations).

The adopted PATS approach has withstood legal challenge and, in classifying areas as Marginal, maximizes initial planning flexibility for air agencies, which the EPA does not believe thwarts Congress’ intent. To the extent that states are concerned about their inability to timely meet the Marginal attainment deadlines, the CAA provides authority for them to voluntarily request a higher classification for individual areas, if needed. The docket for this final action includes a more detailed response to comments suggesting that EPA adopt an alternative approach that would have the effect of classifying more areas as Moderate.

Comment: Some commenters suggested that the EPA allow areas the option to implement the 2015 ozone NAAQS under CAA section 172 (Part D, subpart 1), which specifies the general nonattainment planning requirements for all NAAQS pollutants.¹³ Implementing the 2015 ozone NAAQS under CAA subpart 1 could eliminate mandatory classifications and provide a potentially more flexible attainment timeline with fewer prescribed control requirements.

Response: The EPA attempted to implement a subpart 1 approach for some ozone nonattainment areas as part of a “hybrid” implementation strategy in transitioning from the 1-hour ozone

¹³ Prior to the 1990 CAA Amendments, all NAAQS nonattainment area requirements were specified in Part D, subpart 1. In the 1990 Amendments, Congress added pollutant-specific subparts containing additional nonattainment area requirements, including subpart 2 which applies to ozone nonattainment areas.

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NAAQS (0.12 ppm) to the 1997 8-hour NAAQS (0.08 ppm), explaining that an area must be covered under CAA subpart 2 if the area’s current (*i.e.*, at the time of designation) 1-hour ozone DV was equal to or greater than 0.121 ppm, which was the lowest 1-hour DV in CAA Table 1 (69 FR 23954; April 30, 2004 – the “Phase 1” Rule). In *South Coast*, the Court rejected the EPA’s approach to placing areas solely under the nonattainment area implementation provisions of CAA subpart 1, including the EPA’s use of the CAA Table 1 threshold for deciding which areas must be covered under implementation of the provisions of CAA subpart 2. 472 F.3d at 892–894. The Court concluded that such a determination must be based on the 8-hour “equivalent” to the 1-hour level specified in CAA Table 1, and ruled that the level that must be used is an 8-hour level of 0.09 ppm. *Id.* We concur with commenters to the November 2016 proposal that the *South Coast* Court left open the possibility that EPA could develop a reasonable basis to place under CAA subpart 1 all or certain areas with an 8-hour DV below 0.09 ppm. The EPA notes, however, that the *South Coast* Court also stated in that same decision that the CAA does not allow the requirements of CAA subpart 2 “to be stripped away” on the basis that other provisions would allow attainment to be achieved more efficiently. *Id.* at 894.¹⁴ We believe that the adopted PATS classification thresholds approach will continue to provide states a pathway for consistent and flexible attainment planning across successive ozone standards and, absent a more robust legal basis, we are not adopting a CAA subpart 1 option for implementing the 2015 ozone NAAQS.

¹⁴ *Cf. NRDC v. EPA*, 706 F.3d 428 (D.C. Cir. 2013) (rejecting EPA’s implementation of PM2.5 under subpart 1, instead requiring that PM2.5 be implemented under the “specific, more stringent, and far less discretionary” provisions of subpart 4).

Comment: The California Air Resources Board (CARB) affirmed our proposal to apply previous voluntary reclassifications for selected nonattainment areas, with the exception of the Sacramento Metro area. As part of their comment, CARB forwarded a request from the Sacramento Air Quality Management District declining the voluntary reclassification for the Sacramento Metro area, which the District anticipated would be classified Moderate for the 2015 ozone NAAQS (*see* comment no. 100 in the rulemaking docket).

Response: Based on comments to the November 2016 proposal received from the state of California, the EPA also intends to apply previous voluntary reclassifications for five of the six California areas originally proposed. Table 1 presents the voluntary reclassification history for these areas across the 1997 and 2008 ozone NAAQS, and the anticipated initial classification and anticipated voluntary reclassification for each area under the 2015 ozone NAAQS. We intend to formally apply the previous voluntary reclassifications for these California areas in a separate action, along with the final nonattainment area designations for the 2015 ozone NAAQS.

TABLE 1: Areas for Which the State of California Requested a Voluntary Reclassification Under the 1997 Ozone NAAQS and Application Under Subsequent Ozone Standards

Nonattainment area	Original 1997 ozone NAAQS classification (attainment date)	Voluntary reclassification for 1997 ozone NAAQS (attainment date)	Voluntary reclassification for 2008 ozone NAAQS (attainment date)	Hypothetical initial classification under 2015 ozone NAAQS ^a (attainment date)	Anticipated voluntary reclassification under 2015 ozone NAAQS ^a (attainment date)
Los Angeles-South Coast Air Basin	Severe-17 (2021)	Extreme (2024)	Extreme (2032)	Severe-15 (2033)	Extreme (2038)
San Joaquin Valley	Serious (2013)	Extreme (2024)	Extreme (2032)	Serious (2027)	Extreme (2038)
Riverside County (Coachella Valley)	Serious (2013)	Severe-15 (2019)	Severe-15 (2027)	Moderate (2024)	Severe-15 (2033)
Ventura County	Moderate (2010)	Serious (2013)	Serious (2021)	Marginal (2021)	Serious (2027)
Western Mojave	Moderate (2010)	Severe-15 (2019)	Severe-15 (2027)	Moderate (2024)	Severe-15 (2033)

^a Based on adopted PATS classification thresholds and final 2014–2016 design values.

It is important to note that an air agency may request a voluntary reclassification for an area under CAA section 181(b)(3) at any time. In the November 2016 proposal, the EPA

encouraged any air agency that wanted a specific higher classification to apply to an area at the time of initial designation to make such a request prior to or contemporaneous with the designation process. However, an air agency that determines it would like a voluntary reclassification after an area’s initial designation may request, and the Administrator must approve, a higher classification for an area for any reason in accordance with CAA section 181(b)(3).

C. Final Action

The EPA is establishing nonattainment area classification thresholds for the 2015 ozone NAAQS using the PATS methodology applied previously to translate the CAA Table 1 thresholds for purposes of the 1997 and 2008 8-hour ozone NAAQS. We are also establishing maximum attainment dates for each nonattainment area classification, consistent with CAA Table 1 and the regulatory approach for both the 1997 and 2008 ozone NAAQS. Table 2 depicts the translation for each of the CAA Table 1 thresholds and corresponding maximum attainment dates for each area classification as they would apply for the 2015 ozone NAAQS.

TABLE 2: CAA Table 1 Ozone Design Value Translation to 8-Hour Design Values for the 2015 Ozone NAAQS of 0.070 PPM Using PATS Methodology and Corresponding Maximum Attainment Dates for Each Area Classification

Area class		1-hour ozone DV (ppm)	Percent above 1-hour ozone NAAQS	8-hour ozone DV (ppm)	Maximum attainment date (years from effective date of designation)
Marginal	From up to ^a	0.121	0.833	0.071	3
		0.138	15	0.081	
Moderate	From up to ^a	0.138	15	0.081	6
		0.160	33.333	0.093	
Serious	From up to ^a	0.160	33.333	0.093	9
		0.180	50	0.105	
Severe-15	From up to ^a	0.180	50	0.105	15
		0.190	58.333	0.111	
Severe-17	From up to ^a	.0190	58.333	0.111	17
		0.280	133.333	0.163	
Extreme	Equal to or above	0.280	133.333	0.163	20

^a But not including.

The EPA intends to apply voluntary reclassifications for five California areas in a separate action with the final nonattainment area designations for the 2015 ozone NAAQS, in accordance with comments received from relevant air agencies in California. The EPA is also finalizing a number of regulatory definitions needed to support the implementation of this final classifications rule.

IV. Environmental Justice Considerations

The EPA believes the human health or environmental risk addressed by this action will not have disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations because it would not negatively affect the level of protection provided to human health or the environment under the 2015 ozone NAAQS. When promulgated, these regulations will establish classification thresholds for the 2015 ozone NAAQS. These requirements are designed to protect all segments of the general population and, as such, will not adversely affect the health or safety of minority, low-income or indigenous populations.

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. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

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This action does not impose an information collection burden under the PRA. The EPA is establishing nonattainment area classification thresholds for the 2015 ozone NAAQS so that areas may be classified at the time of designation as provided in section 181(a) of the CAA. No new information needs to be collected from the states as a result of this final classifications rule.

D. 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. Entities potentially affected directly by this rule include state, local and tribal governments and none of these governments are small governments.

E. 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. The action implements mandates specifically and explicitly set forth in the CAA without the exercise of any policy discretion by the EPA.

F. Executive Order 13132: Federalism

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

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

This action does not have tribal implications as specified in Executive Order 13175. It would not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop a tribal implementation plan under these regulatory revisions. Furthermore, these regulation revisions do not affect the relationship or distribution of power and responsibilities

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between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action. Consistent with the EPA's OAR Handbook for Interacting with Tribal Governments, the EPA invited tribal officials to consult on the November 2016 proposal; however, we received no subsequent requests for consultation.

H. 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.

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

This action is not a "significant energy action" because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous populations as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

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The adopted regulations establish classification thresholds for the 2015 ozone NAAQS, which are designed to protect all segments of the general populations. The results of our evaluation are contained in Section IV of this preamble.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

M. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by the EPA under the CAA. This section provides, in part, that petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit (i) when the agency action consists of “nationally applicable regulations promulgated, or final actions taken, by the Administrator” or (ii) when such action is locally or regionally applicable, if “such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.”

This rule implementing the 2015 ozone NAAQS nonattainment area classifications is “nationally applicable” within the meaning of CAA section 307(b)(1). First, the rulemaking addresses the NAAQS that applies to all states and territories in the U.S. Second, the rulemaking addresses the classification of potential nonattainment areas in states across the U.S. that are located in each of the ten EPA regions, numerous federal circuits and multiple time zones. Third, the rulemaking addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of the CAA being applied to potential

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nonattainment areas in states across the country. Fourth, the rulemaking, by addressing issues relevant to potential nonattainment area classifications in one state, may have precedential impacts upon potential nonattainment area classifications in other states nationwide. Courts have found similar implementation rulemaking actions to be of nationwide scope and effect.¹⁵

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit by **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**. Any such judicial review is limited to only those objections that are raised with reasonable specificity in timely comments. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings brought by us to enforce these requirements.

VI. Statutory Authority

The statutory authority for this action is provided by sections 109; 110; 172; 181; and 301(a)(1) of the CAA, as amended (42 U.S.C. 7409; 42 U.S.C. 7410; 42 U.S.C. 7502; 42 U.S.C. 7511; 42 U.S.C. 7601(a)(1)).

¹⁵ See, e.g., *State of Texas, et al. v. EPA*, 2011 U.S. App. LEXIS 5654 (5th Cir. 2011) (finding SIP call to 13 states to be of nationwide scope and effect and thus transferring the case to the U.S. Court of Appeals for the D.C. Circuit in accordance with CAA section 307(b)(1)). This document is a prepublication version, signed by EPA Administrator, E. Scott Pruitt on 03/01/2018. We have taken steps to ensure the accuracy of this version, but it is not the official version.

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List of Subjects

40 CFR Part 50

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

40 CFR Part 51

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

Dated:

E. Scott Pruitt,
Administrator.

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

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

1. The authority citation for part 51 continues to read as follows:

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

2. Part 51 is amended by adding subpart CC to read as follows:

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

Sec.

51.1300 Definitions.

51.1301 Applicability of part 51.

51.1302 Classification and nonattainment area planning provisions.

51.1303 Application of classification and attainment date provisions in CAA section 181 to areas subject to §51.1302.

Subpart CC—Provisions for Implementation of the 2015 Ozone National Ambient Air Quality Standards

§51.1300 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) *2015 NAAQS* means the 2015 8-hour primary and secondary ozone NAAQS codified at 40 CFR 50.19.

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(b) *8-hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, appendix P for the 2008 NAAQS, and 40 CFR part 50, appendix U for the 2015 NAAQS.

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

(d) *Designation for a NAAQS* shall mean the effective date of the designation for an area for that NAAQS.

(e) *Higher classification/lower classification*. For purposes of determining whether a classification is higher or lower, classifications under subpart 2 of part D of title I of the CAA are ranked from lowest to highest as follows: Marginal; Moderate; Serious; Severe-15; Severe-17; and Extreme.

§51.1301 Applicability of part 51.

The provisions in subparts A-Y and AA of part 51 apply to areas for purposes of the 2015 ozone NAAQS to the extent they are not inconsistent with the provisions of this subpart.

§51.1302 Classification and nonattainment area planning provisions.

An area designated nonattainment for the 2015 ozone NAAQS will be classified in accordance with CAA section 181, as interpreted in §51.1303(a), and will be subject to the requirements of subpart 2 of part D of title I of the CAA that apply for that classification.

§51.1303 Application of classification and attainment date provisions in CAA section 181 to areas subject to §51.1302.

(a) In accordance with CAA section 181(a)(1), each area designated nonattainment for the 2015 ozone NAAQS shall be classified by operation of law at the time of designation. The classification shall be based on the 8-hour design value for the area at the time of designation, in accordance with Table 1 of paragraph (a) of this section. A state may request a higher or lower classification as provided in paragraphs (b) and (c) of this section. For each area classified under this section, the attainment date for the 2015 NAAQS shall be as expeditious as practicable, but not later than the date provided in Table 1 as follows:

TABLE 1—CLASSIFICATIONS AND ATTAINMENT DATES FOR 2015 8-HOUR OZONE NAAQS (0.070 PPM) FOR AREAS SUBJECT TO 40 CFR 51.1302

Area class		8-hour ozone design value (ppm)	Primary standard attainment date (years after the effective date of designation for 2015 primary NAAQS)
Marginal	from	0.071	3
	up to*	0.081	
Moderate	from	0.081	6
	up to*	0.093	
Serious	from	0.093	9
	up to*	0.105	
Severe-15	from	0.105	15
	up to*	0.111	
Severe-17	from	0.111	17
	up to*	0.163	
Extreme	equal to or above	0.163	20
* but not including			

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

(c) A state may request, and the Administrator may in the Administrator's discretion approve, a higher or lower classification for an area in accordance with CAA section 181(a)(4).