Proposed Rules

Federal Register
Vol. 68, No. 118
Thursday, June 19, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 1000

[Docket No. FR–4676–N–09]

Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee; Meeting

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee meeting.

SUMMARY: This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The purpose of the Committee is to discuss and negotiate a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other regulatory issues that arise out of the allocation or reallocation of IHBG funds.

DATES: The committee meeting will be held on Monday, July 14, 2003, Tuesday, July 15, 2003, Wednesday, July 16, 2003, and Thursday, July 17, 2003. The committee meeting will begin at approximately 9 a.m. on Monday, July 14, 2003, and is scheduled to adjourn at 3 p.m. on Thursday, July 17, 2003.

ADDRESSES: The meeting will take place at the Westin Hotel, 1672 Lawrence Street, Denver, Colorado 80202; telephone (303) 572–9100 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Room 4126, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone, (202) 401–7914 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD has established the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee for the purposes of discussing and negotiating a proposed rule that would change the regulations for the Indian Housing Block Grant (IHBG) program allocation formula, and other IHBG program regulations that arise out of the allocation or reallocation of IHBG funds.

The IHBG program was established under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA). NAHASDA reorganized housing assistance to native Americans by eliminating and consolidating a number of HUD assistance programs in a single block grant program. In addition, NAHASDA provides federal assistance for Indian Tribes in a manner that recognizes the right of Indian self-determination and tribal self-government. Following the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570), HUD and its tribal partners negotiated the March 12, 1998 (63 FR 12349), final rule, which created a new 24 CFR part 1000 containing the IHBG program regulations.

II. Negotiated Rulemaking Committee Meeting

This document announces a meeting of the Native American Housing Assistance and Self-Determination Negotiated Rulemaking Committee. The committee meeting will take place as described in the **DATES** and **ADDRESSES** section of the document. The agenda planned for the meeting includes work group sessions and the discussion of work group progress reports by the full committee. The meeting will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may be allowed to make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

Dated: June 12, 2003.

Rodger J. Boyd,

Deputy Assistant Secretary for Native American Programs.

[FR Doc. 03–15444 Filed 6–18–03; 8:45 am]

BILLING CODE 4210–33–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–122–1–7612; FRL–7515–2]

Determination of Nonattainment as of November 15, 1996, and November 15, 1999, and Reclassification of the Beaumont/Port Arthur Ozone Nonattainment Area; State of Texas; Supplemental Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposed rule.

SUMMARY: On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit (the Court) reversed EPA's extension of the attainment date for the Beaumont/Port Arthur moderate 1-hour ozone nonattainment area (BPA). The Court concluded that the Federal Clean Air Act (the Act or CAA) precludes such an extension as a matter of law. The Court remanded our final action approving the ozone attainment demonstration State Implementation Plan (SIP) and the motor vehicle emissions budgets (MVEB) and our finding that the BPA area is implementing all reasonably available control measures (RACM), for proceedings consistent with the Court's opinion and for EPA to demonstrate an examination of all relevant data and provide a plausible explanation for the rejection of proposed RACMs.

In response to the Court's reversal, EPA is withdrawing its final action that extended the attainment date to November 15, 2007, and approved the transport demonstration. The EPA is proposing to issue a finding that BPA has failed to attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1996, the attainment date for moderate nonattainment areas set forth in the Act.

If EPA takes final action on this finding, the BPA area would be reclassified as a serious 1-hour ozone nonattainment area. If EPA issues a final

notice of reclassification of the BPA area to serious, EPA is proposing in the alternative two options for identifying the appropriate attainment date for the area. Under Option 1, EPA is proposing an additional finding that the area failed to attain the 1-hour ozone standard by November 15, 1999, the attainment date for serious nonattainment areas. If EPA takes final action on this finding, the area would therefore be reclassified as a severe 1-hour ozone nonattainment area, with an attainment date of no later than November 15, 2005. Alternatively, under Option 2, the EPA is proposing to reclassify BPA to a serious 1-hour ozone nonattainment area, and retain that classification with an attainment date of no later than November 15, 2005, thereby giving the State a prospective opportunity as a serious area to attain the standard. Under either alternative, we are proposing that the State of Texas submit the required SIP revision on or before one year after the effective date of a final action on this notice. We are further proposing to adjust the dates by which the area must meet the rate-of-progress (ROP) requirements and adjust contingency measure requirements as they relate to the ROP requirements. Due to the revised attainment date in response to the remand, we are proposing to withdraw our final approval of BPA's 2007 attainment demonstration SIP, the MVEB, the mid-course review commitment (MCR),and our finding that BPA implemented all RACM. We also propose the schedule for Texas to submit a revised SIP, a new MVEB, and a re-analysis of RACM.

In particular, we are soliciting comments on the alternate proposed Options 1 and 2.

DATES: Written comments must be received on or before July 21, 2003.

ADDRESSES: Comments on this action can be mailed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733 or e-mailed to *diggs.thomas@epa.gov.* Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Steven Pratt, Air Planning Section (6PD-L), 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone Number (214) 665–2140, e-mail Address: *pratt.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document ''we,'' ''us,'' and ''our'' means EPA. This supplementary information section is organized as listed in the following Table of Contents:

I. What Is the Background for This Proposed Action?

The BPA area is classified as a moderate 1-hour ozone nonattainment area and, therefore, was required to attain the 1-hour ozone standard of 0.12 ppm by November 15, 1996. On April 16, 1999, EPA proposed in the alternative either to reclassify the BPA area to a serious ozone nonattainment area, or to extend BPA's attainment date if the State submitted a SIP consistent with the criteria of the Transport Policy. 64 FR 18864. EPA proposed to find that the BPA area did not attain the 1-hour ozone NAAQS by November 15, 1996, as required by the CAA. The proposed finding was based on 1994–1996 air quality data that showed the area's air quality violated the standard and the area did not qualify for an attainment date extension under the provisions of section 181(a)(5).[1] EPA also proposed that the appropriate reclassification of the area would be from moderate to serious. Although the area was not eligible for an attainment date extension under CAA section 181(a)(5), the April 16, 1999, proposal included a notice of the BPA area's eligibility for an attainment date extension, pursuant to the Transport Policy, which was published in a March 25, 1999, **Federal Register** notice (64 FR 14441). This policy addressed circumstances where pollution from upwind areas interferes with the ability of a downwind area to attain the 1-hour ozone standard by its attainment date. EPA proposed to finalize its action on the determination of nonattainment and reclassification of the BPA area only after the area had received an opportunity to qualify for an attainment date extension under the Transport Policy.

The State of Texas submitted a request for an extension of the attainment date for the BPA area, a transport demonstration, an attainment demonstration SIP and MVEB, a MCR enforceable commitment, and RACM analysis. We proposed on December 27, 2000, to approve the transport demonstration and extend the attainment date without reclassifying the area, approve the attainment demonstration SIP and MVEB, approve the MCR commitment, and find that BPA was implementing all RACM. (65 FR 81786)

On May 15, 2001, EPA issued a final rule (66 FR 26914) in which EPA approved the transport demonstration and extended the attainment date for the BPA area to November 15, 2007, while retaining the area's classification as ''moderate.'' The rule also approved the attainment demonstration for the BPA area and MVEB, approved the State's enforceable commitment to perform a mid-course review and submit a SIP revision by May 1, 2004, found that the area was implementing all RACM, and took one other non-related action. (66 FR 26914). The attainment demonstration SIP is addressed in the State of Texas submittals dated November 12, 1999, and April 25, 2000. Thus, the area would have had until no later than November 15, 2007, the attainment date for the upwind Houston-Galveston (HG) nonattainment

[1] Section 181(a)(5) specifies that a state may request, and EPA may grant, up to two one-year attainment date extensions. EPA may grant an extension if: (1) The state has complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone standard at any monitoring site in the nonattainment area in the year in which attainment is required.

area, to attain the 1-hour ozone standard. The final rule contains EPA's responses to the comments. (We also took one final action not relevant to today's proposed action and the Court's remand: the finding that BPA met the Reasonably Available Control Technology (RACT) requirements for major sources of Volatile Organic Compounds (VOC) emissions.)

A petition for review of the May 15, 2001, rulemaking was filed in the U.S. Court of Appeals for the Fifth Circuit. On December 11, 2002, the Court issued a decision in *Sierra Club* v. *EPA,* 314 F.3d 735 (5th Cir. 2002), reversing the portion of EPA's approval that extended BPA's attainment date to 2007 under the Transport Policy without reclassifying the area.[2] The Court also remanded to EPA the final actions related to the reversal: our approval of the attainment demonstration SIP and MVEB, the MCR commitment, and our finding that the area was implementing all RACM. The Court affirmed the portion of EPA's final action that requires implementation only of control measures that contribute to attainment as expeditiously as practicable and considers implementation costs in rejecting control measures, but remanded EPA's specific determination regarding RACM in the BPA area so that any conclusions about the control measures may be adequately explained. In response to the reversal, we must withdraw our determination to extend the attainment deadline for BPA and our approval of the transport demonstration. In light of the lapse of time since EPA's prior proposal regarding the determination of nonattainment and reclassification, EPA is issuing this supplemental proposal that supersedes the April 16, 1999, proposal. In response to the remand, we are proposing to withdraw our final action approving the attainment demonstration SIP and MVEB and the MCR commitment and finding that BPA is implementing all RACM.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms called the 1-hour and 8-hour[3] standards. Table 1 summarizes the 1-hour ozone standards.

TABLE 1. SUMMARY OF OZONE STANDARDS

Standard	Value	Type	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.

(Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.)

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to the BPA area, and it is the classification of the BPA area with respect to the 1-hour ozone standard addressed in this document.

IV. What Is a SIP and How Does It Relate to the NAAQS for Ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meet the NAAQS established by EPA. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

V. What Is the Beaumont/Port Arthur Nonattainment Area?

The Beaumont/Port Arthur moderate ozone nonattainment area is located in Southeast Texas, and consists of Hardin, Jefferson, and Orange Counties.

VI. What Is the Additional Context for This Proposed Rulemaking?

The Transport Policy provided for an extension of an area's attainment date if it were adversely affected by transport, without reclassification of the affected area. Consequently, when we granted the extension of the attainment date for BPA, we did not take action to finalize the April 16, 1999, proposed finding that BPA had not attained the 1-hour ozone standard by November 15, 1996. We therefore did not reclassify BPA from ''moderate'' to ''serious.'' The Court's ruling means that BPA's attainment date extension is no longer valid. Currently the area is classified as ''moderate'' and the State and the area thus have not yet been subject to the requirements for a ''serious'' area.

The air quality in the BPA area has improved throughout the years. In the early to mid-1990's, the design value hovered around 0.160 ppm, to .150 ppm. Since 1998, the area's design value has fluctuated between 0.134 ppm and 0.145 ppm, correlating to ''marginal'' and ''moderate'' classifications. In 2001, only two of the seven monitoring sites showed exceedences of the NAAQS of 0.124 ppm, while in 2002 only one site showed any exceedences. BPA came very close to attaining in 2002, when it experienced exceedances at that one monitoring site, Sabine Pass, the site most directly impacted by emissions from HG. In fact, the Sabine Pass

[2] Two other United States Circuit Courts of Appeals had previously issued decisions rejecting transport-based attainment date extensions that EPA had granted in other areas. *Sierra Club* v. *EPA,* 294 F.3d 155 (D.C. Cir. 2002) and *Sierra Club* v. *EPA,* 311 F.3d 853 (7th Cir. 2002). In the wake of these decisions, EPA issued final rulemakings reclassifying the Washington, DC ozone nonattainment area, 68 FR 3410 (January 24, 2003), and the St. Louis ozone nonattainment area. 68 FR 4835 (January 30, 2003). (EPA subsequently redesignated the St. Louis area to attainment for the ozone standard 68 FR 25418 and 68 FR 25442 (May 12, 2003).) In addition, in light of the Fifth Circuit's decision on Beaumont, EPA recently issued a final rule withdrawing a transport-based attainment date extension and reclassifying the Baton Rouge ozone nonattainment area. 68 FR 20077 (April 24, 2003).

[3] The 8-hour ozone standard value is 0.08 ppm and is the primary and secondary standard. The standard requires that the average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period, be less than or equal to 0.08 ppm. EPA intends to designate areas under the 8-hour standard by April 15, 2004.

monitor has seen four of the five highest design values since 1997.

Since 1996, the State has implemented a series of VOC and NO_X rules in BPA and the entire eastern half of the State. Texas implemented VOC and NO_X RACT rules in BPA for point and area sources, and implemented for half of the State (all of the attainment counties in the eastern half of Texas), NO_X rules for electric generating facilities, a lower Reid-vapor pressure gasoline, and Stage I vapor recovery program for gas stations. They implemented state-wide NO_X rules for water heaters, small boilers, and process heaters. They entered into enforceable documents reducing NO_X emissions at two large point sources in East Texas. In 2000, Texas adopted beyond-RACT NO_X rules in BPA for point sources with some effective this year and the rest fully implemented by May 2005. The majority of these state rules focus on emissions from point and area sources, not from on-road mobile emissions.

The BPA area's NO_X emissions inventory is composed of about 55% point sources and about 17% on-road mobile sources (area, biogenics, and non-road mobile make up the remaining 28%). Its VOC emissions inventory is composed of about 12% point sources and about 4% on-road mobile sources (area, biogenics, and non-road mobile make up the remaining 84%). This composition is unusual since generally, 1-hour ozone nonattainment areas have NO_X and VOC emissions inventories composed of much greater percentages of on-road mobile sources, on the order of two to three times the NO_X percentage, and on the order of two to six times the VOC percentage. The inventory composition makes it unlikely that additional on-road mobile control measures would significantly affect BPA's NO_X and VOC emissions inventories. Thus, additional on-road mobile controls would be unlikely to significantly aid in reducing NO_X and VOC emissions thereby reducing the ozone concentration level in BPA. This is contrasted to the likelihood that additional point and area control measures would significantly affect BPA's NO_X and VOC emissions inventories, thereby more than likely significantly aiding in reducing NO_X and VOC emissions, and having a greater impact on reducing the ozone concentration level in BPA.

VII. Why Are We Proposing To Reclassify the BPA Area?

Section 181(b)(2) of the Act requires that we determine, based on the area's design value (as of the attainment date), whether an ozone nonattainment area attained the one-hour ozone standard by that date. If we find that the nonattainment area has failed to attain the one-hour ozone standard by the applicable attainment date, the area is reclassified by operation of law to the higher of the next higher classification for the area, or the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice.

We make attainment determinations for ozone nonattainment areas using available quality-assured air quality data. For the BPA moderate ozone nonattainment area, the proposed attainment determination is based on 1994–1996 air quality data. The data show that for 1994–1996, four monitoring sites averaged more than one exceedance day per year. This data calculates to a design value of .157 ppm. Therefore, we propose to find that the BPA area did not attain the 1-hour ozone NAAQS by the November 15, 1996, deadline. Additional background for this proposed finding may be found in the April 16, 1999, proposal (64 FR 18864), the December 27, 2000, proposal (65 FR 81786), and the May 15, 2001, final rule (66 FR 26914). A summary and discussion of the air quality monitoring data for the BPA area for 1994 through 1996 can be found in the April 16, 1999, proposal and its TSD.

Section 181(b)(2)(A) of the Act requires that, when we find that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification or the classification applicable to the area's ozone design value at the time the required notice is published in the **Federal Register**. The classification applicable to BPA's ozone design value at the time of today's notice is ''moderate'' since the area's 2002 calculated design value, based on quality-assured ozone monitoring data from 2000–2002, is 0.144 ppm. (We will not have quality-assured monitoring data to calculate a 2003 design value until the Spring of 2004.) By contrast, the next higher classification for BPA is ''serious.'' Because ''serious'' is a higher nonattainment classification than ''moderate'' under the statutory scheme, BPA would be reclassified as ''serious,'' for failing to attain the standard by the moderate area applicable attainment date of November 15, 1996.

If EPA issues a final notice of reclassification of the BPA area to a ''serious'' classification, EPA must then ascertain the appropriate attainment date for the area. EPA is proposing in the alternative two options.

Section 181(a)(1) provides that the date for a ''serious'' area to attain is set as November 15, 1999, a date that has long since elapsed. Under Option 1, EPA is proposing to make an additional finding that the area did not attain the 1-hour ozone standard as of November 15, 1999. The air quality monitoring data show that for 1997–1999, four monitoring sites averaged more than one exceedance day per year. This data calculates to a design value of .134 ppm.

Table 2 lists the number of recorded exceedances of the one-hour ozone standard at each SLAMS/SPM monitoring site in the BPA area for the period 1997 through 2002, and each monitor's design value for that period. A complete listing of the ozone exceedances at each monitor as well as EPA's calculations of the design values can be found in the technical support document.

TABLE 2.—OZONE EXCEEDANCES IN THE BEAUMONT/PORT ARTHUR AREA

[1997 to 2002]

Site	Type	1997	1998	1999	2000	2001	2002	Site Design Value (ppm)			
								97–99	98–00	99–01	00–02
Beaumont	SLAMS	3	2	0	1	0	0	0.130	0.121	0.117	0.112
Port Arthur	SLAMS	0	0	0	3	0	0	0.115	0.118	0.118	0.118
West Orange	SLAMS	2	1	0	1	0	0	0.110	0.120	0.118	0.118
Hamshire	SLAMS	.....	.....	.....	2	0	0	.....	0.131	0.121	0.119
Sabine	SPM	2	4	3	2	1	3	0.134	0.145	0.134	0.144
Mauriceville	SPM	2	2	0	0	0	0	0.125			
Jefferson Co. Airport	SPM	2	1	3	2	1	0	0.132	0.137	0.132	

—Data unavailable; Data below the NAAQS attainment concentration of 0.125 ppm is not reported for the industry provided SPMs.

Therefore, under Option 1, if we issue a final rulemaking reclassifying the area to ''serious,'' we are proposing further to find that the BPA area also did not attain the ozone standard by November 15, 1999, the attainment deadline for ''serious'' areas. If we finalize this further finding, the BPA area would then be reclassified as ''severe'', with an attainment date of November 15, 2005. Section 181(b)(2) requires the area to be reclassified to the higher of the next higher classification or the area's design value, except that a ''serious'' area cannot be reclassified to any higher level than ''severe.''

Alternatively, under Option 2, we are proposing to find that the area should be reclassified to ''serious,'' but recognizing that the EPA did not reclassify the area as ''serious'' until almost four years after the time the area would have been obligated to meet the attainment date for a ''serious'' area. We are therefore proposing in the alternative that the area should retain the ''serious'' classification. Since the attainment date for serious areas, 1999, elapsed almost 4 years ago, and BPA was not reclassified in time to have a prospective opportunity as a serious area to implement prescribed measures to attain by that date, EPA is therefore proposing to reclassify the area as ''serious'' with an attainment date of November 15, 2005. We think it would be appropriate in these circumstances to retain the serious classification but with a prospective attainment date, since BPA never had an opportunity to attain as a serious area. EPA solicits comments upon this proposed alternative approach.

VIII. What Is the Proposed New Attainment Date for the Beaumont/Port Arthur Area?

In our April 16, 1999, proposal to reclassify BPA, we took comment on whether 21 months (or a different time frame) was adequate for a moderate area to attain the standard where the new attainment date had not yet lapsed, but where there was less time remaining than the Act had contemplated. The attainment date proposed for the BPA area under either Option 1 or 2 is as expeditiously as practicable but no later than November 15, 2005. That date is approximately 24 months from the date that a final rule resulting from this proposal is expected to be published in the **Federal Register**, which would provide approximately the same time frame as that proposed in our April 16, 1999, proposal.

IX. What Is the Proposed Date for Submitting a Revised SIP for BPA?

EPA must address the schedule by which Texas is required to submit the SIP revision if we issue a final finding of failure to attain that reclassifies the area. Pursuant to section 182(i), EPA can adjust any applicable deadline (other than the attainment date) as appropriate for any area reclassified under section 181(b). We propose to have Texas submit the SIP revision on or before one year after the effective date of a final action on this notice. We believe the proposed SIP revision submittal date is reasonable.

Should the area be classified serious, Texas is required to submit SIP revisions meeting the CAA's pollution control requirements for serious areas. The measures required by section 182(c) of the CAA include, the following:

(1) Attainment and reasonable further progress demonstrations;

(2) Clean-fuel vehicle programs;

(3) The major source threshold lowered from 100 to 50 tons per year for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X);

(4) More stringent new source review requirements;

(5) An enhanced air monitoring program; and

(6) Contingency provisions.

Should the area be classified severe, Texas is required to submit SIP revisions meeting the CAA's pollution control requirements for severe areas. The measures required by section 182(c) of the CAA include all of those listed above for a serious area, and the following:

(1) Attainment and reasonable further progress demonstrations;

(2) A reformulated gasoline (RFG) program;

(3) The major source threshold lowered from 50 to 25 tons per year for volatile organic compounds (VOCs) and nitrogen oxide compounds (NO_X);

(4) More stringent new source review requirements (1.3 to 1);

(5) A Vehicle Miles Traveled (VMT) offset SIP;

(6) Major Stationary Source fee for failure to attain; and

(7) Contingency provisions.

In a separate action, the EPA issued a proposed rule to implement the 8-hour ozone NAAQS (June 2, 2003, 68 FR 32082). The proposal contains two discrete frameworks to implement the 8-hour ozone standard while ensuring a smooth transition from the 1-hour standard to the new 8-hour standard. Option 2 for transitioning from the 1-hour to the 8-hour NAAQS proposes to retain the 1-hour standard, designations, and classifications for limited purposes until the area meets the 1 hour standard. For all remaining purposes, EPA would revoke the 1 hour standard and associated designations and classifications one year after the effective date of designations for the 8 hour standard. The notice also proposes allowing areas with an outstanding obligation to submit a 1-hour ozone attainment demonstration to submit their 8-hour ozone attainment demonstration in lieu of the 1-hour attainment demonstration. For more detailed information, please see the Proposed Rule to Implement the 8-Hour Ozone NAAQS. We are also encouraging comments on the potential impact of this option on the BPA area and its SIP obligations if we finalize reclassification.

X. Why Are We Proposing To Withdraw the Attainment Demonstration, MCR and MVEB approvals and the RACM Finding, and What Are the Potential Impacts of the Proposed Withdrawals?

We are proposing to withdraw our final approval of BPA's 2007 attainment demonstration and the accompanying Motor Vehicle Emission Budget (MVEB), the MCR enforceable commitment, and the Reasonably Available Control Measures (RACM) finding. Having an earlier attainment date than 2007 requires the submission of a revised attainment demonstration SIP, a new MVEB, and a re-analysis of the RACM determination.

To be consistent with the Court's reversal of the 2007 attainment date extension, and to respond to the remand, we propose to withdraw our May 15, 2001, approval of the 2007 attainment demonstration and MVEB, the MCR enforceable commitment, and the finding that the area was implementing all RACM. They are no longer applicable as they were based on a 2007 attainment date. A new attainment demonstration with a new MVEB, and a new RACM analysis, will be required to be submitted for the BPA area, when we take final reclassification action. Additionally, the Court affirmed the portion of our May 15, 2001, final action that treats as potential RACMs only those measures that would advance the attainment date and considers implementation costs when rejecting certain control measures in its December 11, 2002, decision. However, the Court remanded to EPA the analysis and conclusions regarding RACM in the BPA area. According to the Court's order, the analysis must: (1) demonstrate an examination of all

relevant data; and (2) provide a plausible explanation for the rejection of proposed RACMs including why the measures, individually and in combination, would not advance the BPA area's attainment date.

Subsequent to the State's submittal, the EPA issued a memorandum clarifying its position on RACM analyses (memorandum from John S. Seitz and Margo Oge, December 14, 2000, titled ''Additional Submission on RACM from States with Severe 1-hour Ozone Nonattainment Area SIPS''). The memorandum clarifies that it is the State's responsibility to perform and submit a RACM analysis for EPA use in determining SIP approval. Even though the State is responsible for developing the new analysis, EPA will only consider as adequate an RACM analysis by the State containing the factors outlined in the Court's December 11, 2002, ruling, when evaluating the use of RACM in the SIP approval process. The RACM analysis will be due on or before the attainment demonstration due date.

Withdrawing approval of the MVEB will result in reverting to the previously approved MVEBs for the purposes of transportation conformity. This would be the 1996 budget which was for VOCs only and did not include a NO_X budget. Therefore, there will be no valid NO_X budget in effect until a new MVEB (for both VOC and NO_X) is submitted and found adequate. In order for transportation projects to proceed in the absence of an adequate NO_X budget, an area must: (1) Pass a ''build/no-build'' emissions test, meaning that projected future regional emissions from the transportation system after making proposed changes must be lower than the projected emissions from the existing transportation system; and (2) demonstrate that the estimated future emissions will not exceed 1990 levels. See 40 CFR 93.119(b).

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

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

In addition to the fact that the motor vehicle emissions budgets contained in the State's November 12, 1999, and April 25, 2000, submittals are based on the year 2007, which is no longer an allowable attainment date under the decision in *Sierra Club* v. *EPA,* the current MVEB is not based upon the most recent mobile source emission factors model, MOBILE6.

The motor vehicle emissions budgets submitted to fulfill the SIP revision requirements, including those of the attainment demonstration, must be prepared using the MOBILE6 emissions factor model. The State should refer to applicable guidance and policy, such as ''Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity'' (memorandum from John S. Seitz and Margo Tsirigotis Oge, January 18, 2002) in preparing the budgets. The revised SIP must contain budgets based on MOBILE6 modeling.

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

The section 182(c)(2)(B) reasonable further progress requirement requires volatile organic compounds (VOC) or nitrogen oxides (NO_X) reductions of 3 percent per year, averaged over a 3-year period, until the attainment date, for serious and above ozone nonattainment areas designated and classified under the 1-hour ozone NAAQS. The EPA refers to these reductions as the rate-of-progress (ROP) requirement.

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

> In general, EPA believes that MOBILE6 should be used in SIP development as expeditiously as possible. The Clean Air Act requires that SIP inventories and control measures be based on the most current information and applicable models that are available when a SIP is developed.[4]

Texas has not submitted ROP plans other than the original 15% ROP plan required for the BPA area, since under the Transport Policy the BPA area was not required to meet the post-1996 ROP requirements. The post-1996 until the attainment date ROP plans will need to be based upon MOBILE6.

The post-1996 rate-of-progress requirement flows from section 182(c)(2)(B) which requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reduction from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date.[5] Baseline emissions are the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under certain Federal programs and Clean Air Act mandates: phase 2 of the Federal gasoline Reid vapor pressure regulations (Phase 2 RVP) promulgated on June 5, 1990 (see 55 FR 23666); the Federal motor vehicle control program in place as of January 1, 1990 (1990 FMVCP); and certain changes and corrections to motor vehicle inspection and maintenance (I/M) programs and corrections and reasonably available control technology (RACT) that were required under section 182(a)(2).[6] We have issued guidance that provides detailed information for implementing the rate-of-progress provisions of section 182.[7] Basically our guidance requires the calculation of a target level of emissions for each rate-of-progress milestone year. The target level for any rate-of-progress milestone year is the 1990 baseline emissions decreased by the amount of baseline emissions that would be reduced by the 1990 FMVCP, the Phase 2 RVP program, and RACT fix-ups[8] by that year and reduced by the amount of the mandated minimum reductions (15 percent VOC by 1996, and an additional nine (9) percent VOC, or VOC and NO_X, by 1999, an additional 9 percent VOC, or VOC and NO_X, by 2002, and an additional VOC, or VOC and NO_X, by 2005). Under our guidance, the first rate-of-progress milestone year target levels, for example, the 15 percent VOC reduction by 1996, starts with the 1990 base year emissions and then subtracts the effects of the 1990 FMVCP and Phase 2 RVP through 1996 and also subtracts the required 15 percent VOC reduction. The 1999 VOC target level starts with the 1996 target level and subtracts the effects between 1996 and 1999 of the 1990 FMVCP and Phase 2 RVP and subtracts the required 9

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

[5] As a moderate area, BPA was not required to submit a ROP plan for a nine (9) percent reduction for the 3-year period November 15, 1996, through November 15, 1999. However, as a serious or severe area the BPA area is required to submit a ROP plan through November 15, 2005, the new attainment date.

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

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

[8] The BPA area has no I/M program and so has no I/M fix-ups to consider. A vehicle I/M program would normally be listed as a requirement for a moderate ozone nonattainment area. However, the Federal I/M Flexibility Amendments of 1995 determined that urbanized areas with populations less than 200,000 for 1990 (such as Beaumont/Port Arthur) are not mandated to participate in the I/M program (60 FR 48033, September 18, 1995).

percent post-1996 reduction. For each target level, our guidance requires the preparation of a 1990 base year inventory ''adjusted'' to the milestone year (the ''1990 adjusted base year inventory'') to account for the effects of the 1990 FMVCP and Phase 2 RVP by the milestone year. The adjusted inventory uses 1990 motor vehicle activity levels but emission factors computed by MOBILE6 for the applicable milestone year. For example, preparation of a rate-of-progress plan for the ROP milestone year of 1999, with NO_X substitution, requires a 1990 base year inventory for both VOC and NO_X, a 1990 base year VOC inventory adjusted to 1996, and 1990 base year VOC and NO_X inventories inventory adjusted to 1999. Preparation of a rate-of-progress plan for 2005 with NO_X substitution requires a 1990 base year inventory for both VOC and NO_X plus the following seven ''adjusted'' inventories: 1996 VOC; 1999 VOC and NO_X; 2002 VOC and NO_X; and 2005 VOC and NO_X.

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

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

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

A. Rate-of-Progress Milestones

Section 182(c)(2)(B) requires serious and above areas to achieve a 3 percent per year reduction in baseline VOC emissions (or some combination of VOC and NO_X reductions from baseline emissions pursuant to section 182(c)(2)(C)) averaged over each consecutive three-year period after November 15, 1996, until the attainment date. Under the proposed new attainment date, attainment must be achieved as expeditiously as practicable but no later than November 15, 2005.

Under the proposed schedule for submittal of the new SIP, the rate-of-progress plans for the 1999 and 2002 milestone years will be due well after the November 15, 1999, and November 15, 2002, milestone dates. If sufficient actual reductions occurring by the November 15, 1999, and November 15, 2002, milestone dates do not now exist, then Texas can only get reductions after the two milestone dates because, at this point, the State does not have the ability to require additional reductions for a period that has already passed. The passing of the deadlines does not relieve Texas from the requirement to achieve the 18 percent reduction in emissions, but simply means that the 18 percent reduction must be achieved as expeditiously as practicable but no later than November 15, 2005.

The approved SIP for the BPA area contains measures that generate additional benefits after November 15, 1996. Such measures include beyond-RACT reduction requirements on large sources of NO_X.

As discussed elsewhere in this document in the section titled ''What is the Relationship Between MOBILE6 and the Post-1999 Rate-of-Progress,'' the CAA specifies the emissions ''baseline'' from which each emission reduction milestone is calculated. Section 182(c)(2)(B) states that the reductions must be achieved ''from the baseline emissions described in subsection (b)(1)(B).'' This baseline value is termed the 1990 adjusted base year inventory. Section 182(b)(1)(B) defines baseline emissions (for purposes of calculating each milestone VOC/NO_X emission reduction) as ''the total amount of actual VOC or NO_X emissions from all anthropogenic sources in the area during the calendar year of enactment'' and excludes from the baseline the emissions that would be eliminated by certain specified Federal programs and certain changes to state I/M and RACT rules.[9] The 1990 adjusted base year inventory must be recalculated relative to each milestone and attainment date because the emission reductions associated with the FMVCP increase each year due to fleet turnover.[10]

Therefore, since there are federal and state rules requiring reductions after November 15, 1996, EPA concludes that the BPA area has already implemented measures creditable towards the 1999 and 2002 rate-of-progress milestones. However, we are not able to conclude that the area has sufficient measures to achieve the required 9 percent reduction by November 15, 1999, and an additional 9 percent reduction by November 15, 2002, in the absence of the rate-of-progress plans for both the 1999 and 2002 milestone years that document the calculations of the 1999 and 2002 target levels of emissions and how the SIP accounts for expected growth in emissions related activities, and contain the requisite demonstration that sufficient creditable reductions have or were projected to occur by November 15, 1999, and November 15, 2002, respectively. We have insufficient data concerning what the levels of reductions will be in the area by 1999 and 2002, since we do not know what the 1990 adjusted base year inventory for 1996, 1999, and 2002 will be or the projected emissions growth for the periods of November 15, 1996, through November 15, 1999, and November 15, 1999, through November 15, 2002. Nor do we have sufficient information to allow us to determine what date will be as expeditiously as practicable for this post-1996 18 percent rate-of-progress requirement.

EPA proposes that the 1999 and 2002 rate-of-progress requirements be that Texas submit a rate-of-progress plan that demonstrates that the SIP has sufficient measures to make the required 18 percent reductions by a date as expeditiously as practicable.[11] Texas must identify sufficient data and show why they meet the ''as expeditiously as practicable'' requirement. Such SIP revision will have to demonstrate that any date after November 15, 1999, by which the 1999 9 percent ROP reduction is achieved, as well as any date after November 15, 2002, by which the first post-1999 9 percent ROP reduction is achieved, is as expeditiously as practicable.

B. 2005 Rate-of-Progress

EPA is not proposing any change to the date by which the second 9 percent increment of post-1999 rate-of-progress must be achieved. If the currently adopted and approved SIP measures and the current suite of Federal measures will not achieve the required rate-of-progress reductions, we believe the State has sufficient time to adopt and implement measures to achieve the required reductions in the BPA area by November 15, 2005.

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

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

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

C. Contingency for Failure To Achieve Rate-of-Progress by November 15, 1999 and November 15, 2002

The contingency measures plan must identify specific measures to be undertaken if the area fails to meet any applicable milestone, to make rate-of-progress, or to attain the NAAQS. With respect to the November 15, 1999, and November 15, 2002, milestones, EPA believes that the contingency plan will need to account for any adjustment to the milestone dates.

We also note that the presently-approved 1996 ROP/attainment contingency plan is automatically invoked if we take final action determining the BPA has failed to attain the standard. (See 63 FR 6659 for the contingency measures.) Therefore, the State will be required to ''backfill'' these contingency measures. Since the BPA area did not attain by the moderate area attainment date, and in order to fulfill the contingency measures requirements of sections 172(c)(9) and 182(c)(9) of the CAA, it is proposed that the implementation of the failure-to-attain contingency measures in the current SIP will be triggered automatically upon the effective date that this proposed rule is finalized. Further, Texas will be required to submit a revision to the SIP containing additional contingency measures for its serious, or if appropriate, severe, area SIP to meet ROP requirements and backfill for failure to attain. *See* 57 FR 13498, 13511 (1992).

XIII. What Are the Impacts on the Title V Program?

Upon reclassification to serious or severe, the major stationary source threshold will be lowered. Consequently, the State's Title V operating permits program regulations need to cover existing sources that will become subject to the appropriate lower major stationary source threshold. Any newly major stationary sources must submit a timely Title V permit application. ''A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.'' *See* 40 CFR 70.5(a)(1). The 12 month (or earlier date set by the applicable permitting authority) time period to submit a timely application will commence on the effective date of any reclassification action.

XIV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

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

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

Dated: June 9, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–15521 Filed 6–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1898, MB Docket No. 03–132, RM–10709]

Radio Broadcasting Services; Oak Grove, KY and Springfield, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by Saga Communications of Tuckessee, LLC, licensee of Station WJOI–FM, Channel 232A, Springfield, Tennessee, proposing the reallotment of Channel 232A from Springfield, Tennessee to Oak Grove, Kentucky, as the community's first local aural transmission service, and modification of Station WJOI–FM license accordingly. Channel 232A can be allotted to Oak Grove, in compliance with the minimum distance separation requirement of the Commission's Rules, provided there is a site restriction 9.3 kilometers (5.8 miles) east of the community. The reference coordinates for Channel 232A at Oak Grove are 36–38–23 NL and 87–20–39 WL.