

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-]

Identification of Additional Ozone Areas Attaining the
1-Hour Standard and to Which the 1-Hour Standard is No
Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to identify ten additional ozone areas where the 1-hour standard is no longer applicable.

Thus, upon finalization of this proposed action, the Code of Federal Regulations for ozone will be amended to reflect such changes. On July 18, 1997, EPA provided by rule that the 1-hour ozone standard would no longer apply to an area based on a determination by EPA that the area has attained that standard according to 40 CFR 50.9(b). The 1-hour standard will continue to apply to areas for which EPA has not made a determination through rulemaking. The EPA has previously taken final action regarding the applicability of the 1-hour standard for other areas on June 5, 1998 and July 22, 1998. The ten additional proposed areas are: Boston-Lawrence-Worcester (E.MA), Massachusetts-New Hampshire; Memphis, Tennessee; Muskegon, Michigan; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; Providence (All

RI), Rhode Island; Allegan County, Michigan; Oceana County, Michigan; Mason County, Michigan; Door County, Wisconsin.

DATES: To be considered, comments must be received on or before **[insert date 30 days from date of publication]**.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to Air and Radiation Docket and Information Center (6101), Attention: Docket No. A-98-48, U.S. Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460, telephone (202) 260-7548, between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under SUPPLEMENTARY INFORMATION of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Questions concerning this notice should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5246/5238. In addition, the following Regional contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region I - Richard P. Burkhart, (617) 918-1664

Region IV - Kay Prince, (404) 562-9026

Region V - Todd Nettesheim, (312) 353-9153

SUPPLEMENTARY INFORMATION: *Electronic Availability* - The official record for this proposed rule, as well as the public version, has been established under docket number A-98-48 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:00 a.m. to 4:00p.m., Monday through Friday, excluding legal holidays. The official proposed rulemaking record is located at the address in ADDRESSES at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A-98-48. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

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I. Background

On July 16, 1997, the President issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA indicating that within 90 days of promulgation of the new 8-hour standard, the EPA would publish an action identifying ozone areas to which the 1-hour standard would cease to apply. The memorandum stated that for areas where the air quality did not currently attain the 1-hour standard, the 1-hour standard would continue in effect. The provisions of subpart 2 of title I of the Clean Air Act (CAA) would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an

8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, provides increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also announced that revocation of the 1-hour ozone national ambient air quality standard (NAAQS) would be delayed until areas achieved attainment of the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS. The EPA provided, by regulation, that the 1-hour standard would no longer apply to an area upon a determination by EPA that the area has attained the 1-hour standard.

On June 5, 1998 (63 FR 31014) and July 22, 1998 (63 FR 39432), EPA took final actions determining that numerous areas had attained the 1-hour standard and that the 1-hour standard no longer applied to those areas.

II. Summary of Today's Action

The purpose of this document is to propose the revocation of the 1-hour standard in ten additional areas that EPA has determined are not violating the 1-hour

standard. The newly identified areas are: Boston-Lawrence-Worcester (E.MA), Massachusetts-New Hampshire; Memphis, Tennessee; Muskegon, Michigan; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; Providence (All RI), Rhode Island; Allegan County, Michigan; Oceana County, Michigan; Mason County, Michigan; Door County, Wisconsin.

III. Analysis of Air Quality Data

This action, proposing to determine these areas are attaining the 1-hour standard and thus no longer subject to the 1-hour standard, is based upon analysis of quality-assured, ambient air quality monitoring data showing no violations of the 1-hour ozone standard. Determinations for this notice were based upon the most recent data available, i.e., 1996-1998 data. Detailed air quality data information used for today's determinations is contained in the Technical Support Document (TSD) to Docket No. A-98-48. The method for determining attainment of the ozone NAAQS is contained in 40 CFR 50.9 and Appendix H to that section. The level of the 1-hour primary and secondary NAAQS for ozone is 0.12 ppm.

IV. Effect of Revocation

Once EPA has determined that the 1-hour standard no longer applies to an area, that area is no longer subject to the nonattainment area planning requirements of subpart 2 of

part D of title I of the CAA (section 182). This is because the nonattainment requirements in subpart 2 apply only for purposes of the 1-hour standard. Therefore, any sanctions or Federal implementation plan (FIP) clocks started, pursuant to sections 110 or 179 of the CAA and 40 CFR 52.31 with respect to planning requirements under section 182 of the CAA, are no longer applicable once EPA takes final action determining that an area has attained the 1-hour standard and, thereby, terminating the applicability of that standard for the area.

V. Other Regulatory Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The OMB has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604), unless EPA certifies that the rule will not have a significant impact on a substantial

number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The EPA is proposing that this rule, in its final form, will not have a significant impact on a substantial number of small entities because the determination that the 1-hour standard ceases to apply does not subject any entities to any additional requirements.

C. Unfunded Mandates

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

The EPA proposes that today's action, if finalized, would not include a Federal mandate that may result in estimated costs of \$100 million or more to either State,

local, or tribal governments in the aggregate or to the private sector. This Federal action imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

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

On April 21, 1997, the President signed E.O. 13045 entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997). This is the primary directive to Federal agencies and departments that Federal health and safety standards now must include an evaluation of the health or safety effects of the planned regulation on children. For rules subject to the E.O., agencies are further required to issue an explanation as to why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045 because this is not an economically significant regulatory action as defined by E.O. 12866, and it does not involve decisions on environmental health risks or safety risks that disproportionately affect children.

E. Executive Order 12875: Enhancing the Intergovernmental

Partnership

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of the affected State, local and tribal governments; the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13084: Consultation and Coordination

with Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The identified areas are not located in tribal lands, and this action does not involve or impose any requirements that

affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

G. Paperwork Reduction Act

This proposal does not contain any information collection requirements which requires OMB approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

H. Executive Order 12898: Environmental Justice

Under E.O. 12898 each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. Today's action (identifying additional ozone areas where the 1-hour standard is no longer applicable) does not adversely affect minorities and low-income populations because the new, more stringent 8-hour ozone standard is in effect and provides increased protection to the public, especially children and other at-risk populations.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 81

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

Dated:

Carol M. Browner,
Administrator