1972 (33 U.S.C. 1414(f), 1418); secs. 104 and 115, Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. 9604 and 9615); sec. 505, Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2005).

2. Section 2.205(c) is removed and reserved.

[FR Doc. 99–27798 Filed 10–22–99; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[FRL–6463–8]

Rescinding Findings That the 1-Hour Ozone Standard No Longer Applies in Certain Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today, EPA is proposing to rescind its prior findings that the 1-hour ozone national ambient air quality standard (NAAQS) and its accompanying designations and classifications no longer apply in certain areas. The EPA had previously taken final action regarding the applicability of the 1-hour standard for various areas on June 5, 1998, July 22, 1998, and June 9, 1999. A recent ruling of the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) has undermined the basis for EPA's previous determinations on applicability of the 1-hour ozone standard. In the ruling, the court remanded the 8-hour NAAQS for ozone and curtailed EPA's authority to enforce it. The effectiveness of the 8-hour standard served as the underlying basis for EPA's regulations governing these applicability determinations and thus for EPA's finding that the 1-hour standard no longer applied in areas that EPA determined were attaining the 1-hour standard. Since the court has ruled that EPA cannot fully implement the 8-hour standard, and it may be some time before EPA is able to take steps to secure the public health protection afforded by an 8-hour standard, EPA is today proposing to rescind the findings that the 1-hour standard no longer applies, and thereby reinstate the applicability of the 1-hour standard. Under this proposal, the designations and classifications that previously applied in such areas with respect to the 1-hour standard would be reinstated. Furthermore, in today's action, EPA is proposing to amend 40 CFR 50.9(b) to provide by rule that the 1-hour ozone standard will continue to apply to all areas notwithstanding promulgation of the 8-hour standard.

DATES: Your comments must be submitted on or before December 1, 1999 in order to be considered.

ADDRESSES: You may comment in various ways:

On paper. Send paper comments (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–99–22, U.S. Environmental Protection Agency, 401 M St., SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548.

Electronically. Send electronic comments to EPA at: A-and-R-Docket@epamail.epa.gov. Avoid sending confidential business information. We accept comments as e-mail attachments or on disk. Either way, they must be in WordPerfect 5.1 or 6.0 or ASCII file format. Avoid the use of special characters and any form of encryption. You may file your comments on this proposed rule online at many Federal Depository Libraries. Be sure to identify all comments and data by Docket number A–99–22.

Public inspection. You may read the proposed rule (including paper copies of comments and data submitted electronically, minus anything claimed as confidential business information) at the Docket and Information Center. They are available for public inspection from 8:00 a.m. to 5:30 p.m., Monday through Wednesday, excluding legal holidays. We may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Questions about this proposal 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 or e-mail to nikbakht.annie@epamail.epa.gov or gilbert.barry@epamail.epa.gov. To ask about policy matters or monitoring data for a specific geographic area, call one of these contacts:

Region I—Richard P. Burkhart (617) 918–1664,
Region II—Ray Werner (212) 637–3706,
Region III—Marcia Spink (215) 814–2104,
Region IV—Kay Prince (404) 562–9026,
Region V—Todd Nettesheim (312) 353–9153,
Region VI—Lt. Mick Cote (214) 665–7219,
Region VII—Royan Teter (913) 551–7609,
Region VIII—Tim Russ (303) 312–6479,
Region IX—Morris Goldberg (415) 744–1296,
Region X—William Puckett (206) 553–1702

SUPPLEMENTARY INFORMATION: The Agency is asking for your comments on whether EPA should rescind findings that the 1-hour standard no longer applies, and on the effects of such a rescission. See section IV of this proposal for specific issues open for comment.

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I. Background

A. What was the basis for EPA's previous rulemaking actions finding that the 1-hour ozone standard no longer applied in certain areas?

On July 18, 1997 (62 FR 38856), we issued a regulation replacing the 1-hour 0.12 parts per million (ppm) ozone NAAQS with an 8-hour standard at a level of 0.08 ppm. An area's compliance with the 8-hour standard is measured by 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, the elderly, and other at-risk populations.

Also, on July 18, 1997, we announced that the 1-hour ozone NAAQS would continue to apply to areas until areas attained the 1-hour NAAQS. We did this to provide continuity in public health protection during the transition to implementation of the new NAAQS. We codified this approach in a regulation providing that the 1-hour standard would no longer apply to an area upon a determination by EPA that the area was attaining the 1-hour standard. 62 FR 38856, codified at 40 CFR 50.9(b). The regulation indicating that the 1-hour standard would no longer apply upon attainment was clearly premised upon the effectiveness of the 8-hour standard and the implementation scheme developed for that standard. See, e.g., 63 FR 31014, 31016 (3rd col.).

Also, on July 16, 1997, President Clinton issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of EPA indicating that within 90 days of our issuing the new 8-hour standard, we would publish an action identifying ozone areas to which the 1-hour standard would no longer apply. The memorandum recognized that for areas where the air quality did not currently attain the 1-hour standard, the 1-hour standard would continue in effect. The memorandum also recognized that provisions of subpart 2 part D of title I of the Clean Air Act (CAA) would apply to areas that remained subject to the 1-hour standard and that were designated nonattainment until EPA determined that the area was attaining the 1-hour standard.

On June 5, 1998 (63 FR 31014), July 22, 1998 (63 FR 39432), and June 9, 1999 (64 FR 30911), we issued final rules for many areas that were attaining the 1-hour standard, finding that the 1-hour standard no longer applied to these areas and amending the Code of Federal Regulations (CFR) to remove the designations and classifications that had applied to those areas for the 1-hour standard under sections 107, 172 and 181 of the CAA.

B. What Effect Does the Recent Court Decision Have on Today's Proposed Action?

On May 14, 1999, the D.C. Circuit issued an opinion questioning the constitutionality of the CAA authority to review and revise the NAAQS, as applied in EPA's revision to the ozone and particulate matter NAAQS. *American Trucking Association* v. *U.S. EPA*, 175 F.3d 1027 (D.C. Cir. 1999). The court stopped short of finding the statutory grant of authority unconstitutional, instead remanding to EPA to identify a determinate principle for promulgating the appropriate level of these NAAQS. The court also addressed other issues, including EPA's authority to designate and set attainment dates for a revised ozone standard. The court found that EPA has authority to designate areas for a revised ozone standard. However, based on the statutory provisions regarding classifications and attainment dates under sections 172(a) and 181(a), the court's ruling curtailed EPA's ability to implement and enforce a more stringent ozone NAAQS. On June 28, 1999, EPA filed a petition for rehearing in *American Trucking* addressing this and other portions of the court's opinion. The EPA believes that unless and until the court's decision is revised or vacated, EPA should not continue implementation efforts with respect to the 8-hour standard that could be construed as inconsistent with the court's ruling. This reservation does not apply to any EPA actions based on the 1-hour standard because the court did not limit EPA's ability to implement the 1-hour standard.

II. What is the Agency's primary reason for reinstating the 1-hour ozone standard in areas where it no longer applies?

Since EPA is uncertain as to its ability to implement the new 8-hour standard, and will remain unsure until ongoing litigation is completed, EPA believes that it is not appropriate to leave in place the determinations that the 1-hour ozone standard no longer applies to areas that had attained the 1-hour standard. These determinations were premised on the existence of an implementation scheme for the 8-hour ozone standard and the need to transition to the implementation of that standard. Since EPA cannot effectively implement the 8-hour standard, EPA cannot justify keeping the 1-hour standard inapplicable in these areas. In the absence of a 1-hour standard, no ozone standard that could be effectively implemented would be in place in these areas. Therefore, pending resolution of the litigation involving EPA's ability to promulgate and enforce the 8-hour NAAQS, EPA is proposing to rescind the findings that the 1-hour ozone standard no longer applies. The EPA considers this action necessary in order to ensure continued health protection for the public while the issue of EPA's ability to promulgate and enforce a revised ozone standard is resolved. If EPA finalizes today's proposed action, and then EPA prevails in the litigation and retains the ability to promulgate a revised 8-hour ozone standard that can be effectively enforced, EPA believes it would again be appropriate for the 1-hour standard to no longer apply once an area attains that standard, as established in the original promulgation of the 8-hour standard.

The EPA is charged with ensuring that the American public has healthy air to breathe. A fully enforceable 8-hour standard would have provided substantial protection against exposures to ozone over both short- and long-term time periods. Without full authority to enforce the 8-hour standard and with no applicable 1-hour standard nationwide, the public will be at a greater risk of exposure to short-term ozone concentrations and acute effects based on 1- to 3-hour exposures. Such acute effects may be manifested as significant lung function decrements in individuals engaged in heavy exertion, respiratory symptoms (e.g., cough, chest pain), reduced exercise performance, increased airway responsiveness, impaired respiratory defenses, and increased hospital admissions and emergency room visits. New health effects information additionally demonstrates associations between a wide range of health effects and 6- to 8-hour exposures below the level of the 1-hour standard. Thus, insuring the 1-hour standard is met will both address effects related to 1-hour exposures and reduce, though not eliminate, the risk of health effects associated with 6- to 8-hour exposures.

Some of the areas where the 1-hour standard has been found inapplicable are now violating that standard and EPA is not aware of any plans in place in these areas to reduce emissions. Likewise, some areas with maintenance plans are now violating the 1-hour standard without implementing contingency measures to curtail violations. Without either a 1-hour standard in place or an 8-hour standard that can be fully implemented, there is no longer a defined process for improving the air quality in these areas.

III. What Action Is EPA Proposing To Take Today?

Today, we are proposing to rescind the findings that the 1-hour standard no longer applies in those areas where the Agency had previously determined that the 1-hour standard had been attained. The 1-hour standard would be put back in place in nearly 3,000 counties, all of the areas where the 1-hour standard had been determined inapplicable in previous final actions taken by the Agency. The areas affected are identified by air quality designations in the docket for this rulemaking at Docket No. A–99–22, and will be listed by county in the proposed CFR language to be published subsequently in a later

Federal Register. Also, the 40 CFR part 81 ozone table, listing areas of the country where the 1-hour ozone standard currently applies and those for which the 1-hour ozone standard is being proposed for reinstatement, can be viewed at the following internet website address: *http://www.epa.gov/ttn/oarpg.* Where the 1-hour ozone standard again becomes applicable as a result of this rulemaking, the attainment and nonattainment designations and classifications applicable to such areas previously will again apply. See Interim Implementation Policy Statement accompanying the proposed 8-hour NAAQS, 61 FR 65752, 65754 (Dec. 13, 1996)(''the designations would remain in effect so long as the current 1-hour ozone NAAQS remains in effect'').

Given that the previous designations and classifications of these areas were based upon the 1-hour ozone standard, which we are proposing will again apply, EPA proposes that the tables in Part 81 of the CFR be amended by again identifying the designation and classification of the area that applied prior to EPA's determinations that the standard no longer applied.

As discussed above, 40 CFR 50.9(b) presently provides that the 1-hour ozone standard would no longer apply once EPA determined that an area attained that standard. For the reasons described above concerning the need to retain the 1-hour standard while EPA's authority to implement and effectively enforce the 8-hour standard is in question, EPA is proposing to revise section 50.9(b) to indicate that the 1-hour standard remains applicable to all areas notwithstanding the promulgation of the 8-hour standard. Furthermore, because as explained above and in the promulgation of the 8-hour standard, EPA believes it is only appropriate to keep the 1-hour ozone standard in place as a transition mechanism to ensure continued public health protection as areas plan to meet the new 8-hour standard, EPA is proposing that after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in section 50.9 will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. EPA believes that by the time the new 8-hour standard becomes fully enforceable under Part D and subject to no further legal challenge, the designations of areas as nonattainment for the 8-hour standard will either have already occurred or will occur very shortly. EPA concludes that at that time if an area is meeting the one-hour standard, it will be most appropriate for areas to concentrate all of their limited resources on planning to meet their obligations under the new 8-hour standard rather than having to simultaneously complete any remaining requirements that are needed to meet the 1-hour standard.

In light of many areas' needs to quickly develop additional State Implementation Plan (SIP) programs in response to the actions EPA is proposing today, EPA intends to provide in any final action on this proposal that the actions proposed today will become effective 90 days after publication of any final action in the **Federal Register**.

IV. What is the effect of rescinding previous findings that the 1-hour standard no longer applied?

The Agency is asking for your comments on the following aspects of this proposed action rescinding the findings that the 1-hour standard no longer applies. The issues are identified by designation status and current air quality. A list of the areas in each category can be found in the public docket for this proposed action at Docket No. A–99–22.

Areas Designated As Attainment with No Violations Since Revocation

For areas that were designated as attainment (with or without maintenance plans) prior to the determination that the 1-hour standard no longer applied and that have remained in attainment for the 1-hour standard since that determination, EPA proposes that no new subpart 2 programmatic SIP requirements, beyond continued compliance with existing provisions of any applicable maintenance plans, will apply to such areas upon reinstatement of the 1-hour standard.

Areas Designated Attainment (Without Maintenance Plans) With Violations Since Revocation

For areas that were designated as attainment that do not have a maintenance plan but have had one or more violations of the 1-hour standard since the determination that the 1-hour standard no longer applied, EPA believes that such areas should be given a reasonable time frame to plan to bring the areas back into attainment. The EPA has the authority to designate these areas as nonattainment; however, no decision to take such action has been made to date, and EPA is not proposing to take such action at this time.

Areas Designated Attainment (With Maintenance Plans) With Violations Since Revocation

For areas that were designated as attainment that do have a maintenance plan but have had one or more violations of the 1-hour standard since the determination that the 1-hour standard no longer applied, EPA believes that the contingency measures outlined in the maintenance plan must be implemented according to the schedule in the plan. In addition, EPA believes that if during the time since the determination that the 1-hour standard no longer applied any requirements to implement contingency measures based on a violation of the 1-hour standard had been removed from the SIP, States should put such requirements back into place in order to assure the correction of any such violations.

Areas Designated Nonattainment With No Violations Since Revocation

For areas that were designated as nonattainment prior to the determination that the 1-hour standard no longer applied and that have remained in attainment of the 1-hour standard since revocation, EPA proposes that the standard and accompanying nonattainment designation will again apply. However, EPA recommends that such areas follow the redesignation requirements of section 107(d)(3)(E) for submission of maintenance plans and redesignation to attainment. The EPA's Regional Offices will work with the States to expedite this process. Also, EPA proposes to apply its May 10, 1995 ''Clean Data Policy'' as appropriate to these areas, which permits suspension of certain requirements under Subpart 2 as they relate to ozone nonattainment areas meeting the ozone NAAQS, including requirements for reasonable further progress and attainment demonstrations. However, outstanding subpart 2 requirements not covered by this policy that were required prior to revocation would continue to apply until redesignation. The EPA will determine the applicability of this policy on a case-by-case basis to individual areas.

Areas Designated Nonattainment With Violations Since Revocation

For areas that were designated as nonattainment prior to the determination that the 1-hour standard no longer applied and that have had violations of the 1-hour standard since that determination, EPA proposes that all of the applicable nonattainment area planning requirements of subpart 2

must be followed. The EPA believes that the nonattainment requirements in subpart 2 would apply to such areas as a matter of law for purposes of the 1-hour standard once this proposed action becomes final. The EPA also believes that it is appropriate to provide a reasonable schedule for these areas to meet any remaining planning needs with respect to these requirements and will work with each area to establish a submittal schedule.

Programmatic Effects

Sanctions

The EPA proposes that any sanctions or Federal implementation plan clocks started under sections 110 or 179 of the CAA and 40 CFR 52.31 with respect to planning requirements in subpart 2 of the CAA would again become applicable to areas. As to the timing of restarting such clocks, EPA proposes that they would start back up where they left off, rather than being considered to have run during the period the standard was no longer in effect. This would be done as a matter of fairness to affected areas, which were not aware that such clocks could have been running during the time that the 1-hour standard was not in effect. The EPA requests comments on this proposed approach.

Conformity

Conformity requirements remained applicable to all areas with maintenance plans upon EPA's determination that the standard was no longer applicable. Rescission of that determination will not affect the continued applicability of conformity. Clean Air Act section 176(c)(5)(B). Conformity does not apply at any time to attainment areas without a maintenance plan. For example, conformity does not apply to the areas designated attainment (without maintenance plans) with violations since revocation, which is discussed above.

The EPA proposes that the conformity requirements of section 176 will apply to all areas previously designated nonattainment at the time the 1-hour standard was revoked. The EPA proposes that conformity requirements will apply immediately upon the effective date of the final action reestablishing the nonattainment designations. We note that the DC Circuit has held that EPA could not provide a one-year grace period for applicability of transportation conformity regulations to newly designated nonattainment areas under the 1-hour standard, but rather that transportation conformity requirements apply as a matter of law immediately upon final designation of any area as nonattainment. *Sierra Club v. EPA*, 129 F.3d 137 (D.C. Cir. 1997). Therefore, EPA believes that the interpretation of the CAA that is most consistent with the case law is that the conformity requirements must apply again to any area designated nonattainment upon the effective date of the designation, for all areas affected by today's proposed action.

The conformity requirements that would apply are included in 40 CFR parts 51 and 93. These requirements were recently modified by EPA's May 14, 1999 guidance entitled, ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision'' and DOT's June 18, 1999 guidance entitled, ''Additional Supplemental Guidance for the Implementation of the Circuit Court Decision Affecting Transportation Conformity.''

When conformity begins applying to affected areas, they must have a currently conforming transportation plan and program in order to receive federal approval or funding for transportation projects. Some areas may have a transportation plan and program that were found to conform before the one-hour standard was revoked. If that conformity determination is still valid, the area would not need to perform a new conformity determination.

The area would need to document that the current transportation plan and program have not changed since the time of the last conformity determination in a manner that would have required a new conformity determination. In addition, the conformity determination must not have expired under the conformity rule's frequency requirements of 40 CFR 93.104.

Many areas may need to complete a new conformity determination, because the transportation plan and program were changed during the time that the one-hour standard was revoked. Areas would demonstrate conformity using the motor vehicle emissions budgets in their one-hour ozone SIP, if we have approved the SIP or found it adequate for conformity purposes. If an area has submitted a SIP with motor vehicle emissions budgets for conformity purposes that we have not approved or affirmatively found adequate, those budgets may not be used for conformity purposes. Any area without a submitted SIP that we have approved or found adequate for conformity purposes would demonstrate conformity using the emission reduction tests (build/no-build) test and/or 1990 test, as described in 40 CFR 93.119.

New Source Review

With respect to new source review (NSR) requirements, EPA believes that, in most cases, the NSR program linked to the section 107 designation and classification that was in effect at the time EPA found that the standard no longer applied will apply automatically under the applicable SIP upon rescission of those findings. Thus, if this action is finalized as proposed, 1-hour attainment and unclassifiable areas will generally be required to continue to implement the prevention of significant deterioration (PSD) permitting program for ozone,[1] whereas 1-hour nonattainment areas will be required to implement the appropriate part D NSR program as necessary to comply with Subpart 2 of the CAA. At a minimum, and only if the applicable SIP specifies no part D NSR program, EPA believes that areas designated nonattainment for the 1-hour standard must issue permits consistent with the Emission Offset Interpretative Ruling in 40 CFR part 51, Appendix S.

The EPA believes that the NSR requirements for most areas will automatically apply under the terms of the applicable SIP. For instance, if an area were previously designated nonattainment and classified as ''serious,'' the applicable SIP would have had to ensure that the area satisfy all of the NSR requirements of a ''serious'' area until we found that the 1-hour standard no longer applied. In most cases, SIPs satisfied this requirement by requiring that all ''serious'' areas in the State meet the applicable NSR requirements (e.g., defining ''major source'' to include any source emitting or having the potential to emit 25 or more tons per year of NOx or VOC). Accordingly, after we found that the standard no longer applied in a given area, the ''serious'' classification and ''nonattainment'' designation for that area were removed, and the SIP's provision applicable to all ''serious'' areas no longer applied to that area. The area was then required to implement whatever NSR program the SIP then specified for attainment areas. If the action proposed today is finalized, EPA believes that the restoration of the designations and classifications will, in most cases, trigger the applicable SIP

[1] Areas previously designated attainment/unclassifiable are required to implement PSD for ozone, even during the period that the 1-hour standard has not applied, because such areas would be attainment for some NAAQS and ozone is a regulated pollutant. See e.g., 40 CFR 52.21 (i)(2). However, such areas would have had to implement moderate area part D NSR during this interim period if located in the ozone transport region. See CAA section 184(b)(2).

requirements for nonattainment areas. This would mean that the hypothetical area described above would be required to implement a ''serious'' area part D NSR program once again.

Although EPA believes that most SIPs will require automatic reinstatement of the NSR requirements that are linked to areas' designations and classifications if today's proposal is finalized, certain SIPs may be worded in a way that does not link the NSR requirements to areas' designations and classifications, and thus such SIPs may present unique circumstances. For example, EPA understands that some SIPs identify specific areas by name and specify the part D NSR requirements for sources in the named areas. Following our prior findings that the standard no longer applied, such an area's requirements would have continued uninterrupted unless and until the State revised its SIP.

If such a SIP were revised since our findings that the designation and classification no longer applied to such an area (so that the SIP now specifies that a given named area must do PSD instead of part D NSR, for instance), the area's SIP would contain no part D NSR obligation for the named area and would not automatically require part D NSR if EPA finalizes this notice. The same issue would arise if the State deleted its part D NSR program entirely from its SIP upon our prior findings that the standard no longer applied. The EPA believes that sources in such areas must be required to obtain permits consistent with the Emission Offset Interpretative Ruling in 40 CFR part 51, Appendix S. The Offset Ruling explains that EPA interprets the CAA to require all major sources and major modifications in nonattainment areas lacking an applicable SIP-approved program to obtain permits meeting certain strict requirements. *See* 40 CFR 52.24(k) (specifying that areas designated nonattainment but lacking approved part D NSR programs must follow the Offset Ruling).

The EPA solicits public comment on whether it is appropriate to apply Appendix S to nonattainment areas where the SIP lacks the applicable nonattainment NSR provisions. In particular, EPA believes that States should act quickly to revise their SIPs to include a part D program for any area that lacks one. The EPA seeks input as to whether, instead of applying Appendix S, States should follow the Agency's prior policy, which specifies that to satisfy the CAA, States must issue permits consistent with subpart 2's additional requirements, even in the absence of an approved SIP. *See* Memorandum from John Seitz, ''New Source Review (NSR) Program Supplemental Transitional Guidance on Applicability of New Part D NSR Permit Requirements'' at page 3 (Sept. 3, 1992).

V. What administrative requirements are considered in today's proposed rule?

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 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 again applies does not itself directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rule merely establishes that the 1-hour standard again applies in certain areas. For the most part, any requirements applicable to small entities that may indirectly apply as a result of this action would be imposed independently by the State under its SIP, not by EPA through this action. Moreover, to the extent this rule would automatically trigger the applicability of certain SIP requirements to small entities (e.g., new source review), this rule cannot itself be tailored to address small entities that would be subject to those requirements.

One requirement that may apply immediately upon this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. However, those rules only apply directly to Federal agencies and metropolitan planning organizations (MPOs), which by definition are designated only for metropolitan areas with population of at least 50,000 and thus do not meet the definition of small entities under the RFA. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act 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.

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 rule would reinstate the applicability of the 1-hour ozone standard and alter the designation status of areas. The consequences of this action may result in some additional costs within the affected areas; however, the Agency believes that these costs

would not exceed $100 million per year in the aggregate.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of Federal actions to SIPs. These rules apply to Federal agencies and MPOs making conformity determinations. EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate annually. In addition, some areas with recent air quality violations will have to take the additional steps specified in their maintenance plans to limit emissions of air pollutants. These measures could, for example, include revising the threshold for new source review, establishing RACT level control for additional sources, establishing or enhancing I/M programs within the area, and requiring the sale of lower volatility gasoline. These measures vary substantially in terms of the expected emission reductions and their potential cost. Because the affected jurisdictions have some flexibility to choose among these measures, it is difficult to estimate the overall cost of these additional controls. EPA believes that the affected areas are already carrying out many of the other obligations associated with this action. For example, most areas have new source review requirements under their existing SIP programs. In addition, many of these areas are located in the OTR and are already carrying out many of the requirements associated with the re-instatement of the 1-hour standard. Therefore, EPA believes that these controls will not cost in the aggregate $100 million or more annually. Thus, this Federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866, and it implements a previously promulgated health or safety-based Federal standard and does not itself involve decisions that affect environmental health or safety risks.

E. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 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, Executive Order 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, Executive Order 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.''

The Agency did consult with a number of Mayors, State officials, and others to alert them to our consideration of reinstating the 1-hour ozone standard and to learn their reactions to the possibility of reinstatement. The EPA contacted elected officials and other State, regional, and local government representatives from across the nation. These contacts included discussions with Mayors from a large number of cities across the country. Reactions of the Mayors to the possible reinstatement varied. Many were clearly supportive of reinstatement and others were not opposed. A few expressed concerns about potential economic effects and several requested that any action taken by EPA follow usual notice and comment rulemaking procedures.

F. Executive Order 12612: Federalism

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999),) which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685 (October 30, 1987),) on federalism still applies. This rule will not have a substantial direct effect on 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 12612.

As noted previously, this rule would simply reinstate the applicability of the 1-hour ozone standard and the associated air quality designations for various areas. For the reasons described above, the rule itself will not directly impose significant new requirements on States or alter relationships between States and the Federal government. Therefore, EPA concludes that this rule will not have substantial federalism implications. After the new executive order takes effect, EPA will determine what its responsibilities are under the new order.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 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, Executive Order 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, Executive Order 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 proposed rule does not significantly or uniquely affect the communities of Indian tribal

governments. This proposed action does not involve or impose any requirements that directly affect Indian tribes. Under EPA's tribal authority rule, tribes are not required to implement CAA programs but, instead, have the opportunity to do so. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. Paperwork Reduction Act

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

I. Executive Order 12898: Environmental Justice

Under Executive Order 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 proposal to reinstate the applicability of the 1-hour standard in certain areas does not adversely affect minorities and low-income populations.

J. 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 proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 50

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

Dated: October 20, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 50—[AMENDED]

1. The authority citation for part 50 continues to read as follows:

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

2. Section 50.9 is amended by revising paragraph (b) to read as follows:

§ 50.9 National 1-hour primary and secondary ambient air quality standards for ozone.

* * * * *

(b) The 1-hour standards set forth in this section will remain applicable to all areas notwithstanding the promulgation of 8-hour ozone standards under § 50.10. In addition, after the 8-hour standard has become fully enforceable under part D of title I of the CAA and subject to no further legal challenge, the 1-hour standards set forth in this section will no longer apply to an area once EPA determines that the area has air quality meeting the 1-hour standard. Area designations and classifications with respect to the 1-hour standards are codified in 40 CFR part 81.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 144 and 146

[FRL–6462–4]

Notice of Availability of Class V Injection Well Study

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA and the Sierra Club entered into a modified consent decree on January 28, 1997. In accordance with the second action required by this decree, EPA has completed a study of all Class V wells not included in the July 29, 1998 proposed rulemaking (63 FR 40586).

ADDRESSES: The study is available on the EPA, Office of Ground Water and Drinking Water, Underground Injection Control web site: *http://www.epa.gov/OGWDW/uic/cl5study.html* or in the Water Docket, U.S. Environmental Protection Agency; 401 M Street, SW, East Tower Basement, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, toll-free 800–426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding federal holidays, from 9:00 a.m. to 5:30 p.m. Eastern Standard Time. For technical inquiries, contact Amber Moreen, Underground Injection Control Program, Office of Ground Water and Drinking Water (mail code 4606), EPA, 401 M Street, SW, Washington, D.C., 20460. Phone: 202–260–4891. E-mail: moreen.amber@epa.gov.

SUPPLEMENTARY INFORMATION: The study of Class V underground injection wells required by a 1997 consent decree with the Sierra Club (*Sierra Club* v. *Browner,* D.D.C. No. 93–2644 NHJ) has been completed. The consent decree required EPA to complete a study of all Class V wells not included in an initial rulemaking (63 FR 40586). This initial rulemaking, also required by the consent decree, was proposed on July 29, 1998 and covers Class V wells determined by EPA to be the highest risk and for which additional study was not necessary. The Class V study provides background information for EPA to use in evaluating the risk that approximately 20 types of Class V wells pose to underground sources of drinking water. Information collected for each well type includes: inventory, injectate constituents, contamination incidents, and current State regulations.

EPA coordinated extensive peer and EPA workgroup reviews of each well-specific draft report to ensure technical accuracy and completeness of the documents. Technical experts were located through the Ground Water Protection Council, three **Federal Register** notices seeking peer reviewers (64 FR 1007–1008), the UIC technical workgroup, the Internet, and EPA. More detailed explanations of the well-types and the components of the study can be found in 64 FR 37803.

The information in the Study will be used to aid EPA in determining if additional federal regulations for these well types are warranted. According to the modified consent decree, no later than April 30, 2001, EPA must propose a decision regarding whether further rulemaking for each Class V well not included in the initial rulemaking is necessary and, if so, how each well should be regulated. A final rule or rules must be signed by the Administrator by May 31, 2002. Before these decisions are made, EPA plans to seek comment from the public. EPA plans to consider comments received at that time in deciding the most appropriate manner of ensuring that the remaining Class V wells are not endangering underground sources of drinking water.