

August 26, 1994

MEMORANDUM

SUBJECT: Nonattainment Area Attainment Determinations, "Bump Ups," and Attainment Date Extension Requests -- Initiation of Delegation and Procedural Guidance

FROM: John S. Seitz, Director  
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TO: Director, Air, Pesticides and Toxics  
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Purpose

The purpose of this memorandum is to advise you that a delegation is being prepared which will authorize the RA's to: 1) make attainment determinations, 2) make bump up determinations, and 3) approve attainment date extensions for ozone, CO, and PM-10 under title I of the Act. In addition, this memorandum provides procedural guidance relevant to the required upcoming marginal ozone nonattainment area determinations. Specifically, the Regions will be publishing notice-and-comment rulemaking on the bump up determinations and attainment date extensions. Regions will also be making attainment determinations, but will not need to publish these through notice-and-comment rulemaking.

Background

The Act addresses attainment and bump up determinations in three places: section 181(b)(2) for ozone, section 186(b)(2) for CO, and section 188(b)(2) for PM-10. Section 181(b)(2) refers to ozone marginal, moderate, and serious areas; and sections 186(b)(2) and 188(b)(2) are applicable to CO and PM-10 moderate areas. These provisions state that within 6 months following the

applicable attainment date, the Administrator shall determine whether the areas achieved the NAAQS by that date. For areas that have not attained the standard, the Act mandates that they shall be reclassified upward by operation of law. The Act further requires the Administrator to publish a notice in the FR identifying the areas not attaining the standard.

Sections 181(a)(5), 186(a)(4), and 188(d) of the Act give the Administrator the discretion to grant up to two 1-year extensions of the attainment date for ozone, CO, and PM-10, respectively. Extensions of the attainment dates can be approved if States have complied with all requirements and commitments pertaining to the area in the applicable State implementation plan. Additionally, the Act requires that no more than one exceedance of the NAAQS can occur in the year preceding the extension for ozone and CO. Further, section 188(d) of the Act states that no more than one exceedance of the 24-hour NAAQS for PM-10 can occur in the area in the year preceding the extension, and the annual mean concentration of PM-10 in the area for such year must be less than or equal to the standard level.

#### Delegation of Authority

As you know, one of the OAQPS' "blue skies" initiatives involves a streamlining approach in meeting title I requirements. This approach consists of shifting responsibilities from Headquarters to the RO's, State and local agencies, and other constituents, as appropriate. At recent long-range planning discussions, the air quality management group recommended that bump ups undergo the streamlining process (i.e., delegate the authority under the Act to the RA's). I fully support the recommendation and have advised my staff to prepare a delegation authorizing the RA's to make the attainment determinations and the bump up determinations, and approve attainment date extensions for ozone, CO, and PM-10 nonattainment areas.

With delegations of authority, I feel that it is still important to emphasize the need for national consistency on Agency decisions. If we appear to be making decisions which are inconsistent from Region to Region, it is likely that the number of lawsuits filed against the Agency will increase. To avoid this, I believe that the RO's should discuss proposed activities which could affect national policies with other Regions and their Headquarters counterparts. This will ensure more consistent decisions, thereby causing fewer "headaches" in the end. The OAQPS staff are available to provide technical and/or policy guidance to the RO's, as needed.

The delegation approval process can take from 6 to 8 weeks from the time the Assistant Administrator for Air and Radiation submits it to the Office of Administration and Resources

Management. When the Administrator approves the delegation, we will let you know so that you can move forward with your actions.

#### Attainment Determinations

On February 3, 1994, a memorandum was issued from D. Kent Berry, Acting Director, Air Quality Management Division, entitled "Procedures for Processing Bump Ups and Extension Requests for Marginal Ozone Nonattainment Areas." Since issuance of that memorandum, OGC has informed us that the attainment determinations required under sections 181(b)(2), 186(b)(2), and 188(b)(2) must also go through notice-and-comment rulemaking. However, they have also advised us that we can meet this requirement by proposing and taking final action on the method by which EPA determines if States have clean air (i.e., based on final, complete, quality-assured AIRS data). Taking action on the method to determine an area's air quality would negate the need to make area-specific attainment determinations via notice and comment by the RO's.

Region III has, therefore, agreed to include general language in their bump up FR notice identifying the method by which EPA determines if States have clean air. The inclusion of this method in their document will fulfill the notice-and-comment requirement for all Regions for any other ozone, CO, and PM-10 attainment determinations. Consequently, other Regions will not have to announce that specific areas are meeting the NAAQS for ozone, CO, and PM-10 and/or the method by which those determinations are made.

Regions will, however, have to publish FR notices on bump ups and/or extensions of the attainment date. Guidance on these activities was included in the February 3, 1994 memorandum referenced above. Boilerplate FR notices are available. These are discussed below. Although it is not required, Regions can inform their States of the attainment determinations by letter or FR informational notice. At a minimum, I encourage you to follow up with a letter to your States.

#### Ozone Marginal Areas

To assist the Regions, a boilerplate FR notice specific to marginal ozone bump ups and attainment date extensions, and a model letter to the States discussing attainment determinations was developed by OGC in cases where the Regions want to send such an informational letter on attainment determinations. Regions do not need to either send a letter or go notice-and-comment rulemaking on attainment determinations. Regions do need to publish rulemakings on bump ups and on extensions of the attainment date.

The documents, entitled Bumpup.fr and Bumpup.ltr, have been placed on the MAPS under the general subdirectory of information transfer. Since the November 15, 1993 attainment date for marginal areas has passed, you should begin preparing the FR notices and any accompanying technical support documents in order to have them finalized when the delegation of authority is approved by the Administrator. In most cases, I think these actions could be processed via the direct final rulemaking process because of their noncontroversial nature.

If you have any questions on this subject matter, please contact Tom Helms at (919) 541-5527, or Denise Gerth at (919) 541-5550.

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