Dated: March 20, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 06–2875 Filed 3–24–06; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2005–0175; FRL–8049–7]

Extension of Public Comment Period for Proposed Rule on the Transition to New or Revised Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is announcing a 90-day extension of the public comment period for the proposed ''Transition to New or Revised Particulate Matter (PM); National Ambient Air Quality Standards (NAAQS).'' As initially published in the **Federal Register** on February 9, 2006 written comments on the advance proposal for rulemaking were to be submitted to EPA on or before April 10, 2006 (a 60-day public comment period). Since publication, EPA has received several requests for additional time to submit comments. Therefore, the public comment period is being extended for 90 days and will now end on July 10, 2006. This extension is based on the fact that the PM NAAQS will not be finalized until September 27, 2006.

DATES: The public comment period for this proposed rule is extended to July 10, 2006.

FOR FURTHER INFORMATION CONTACT: For questions regarding PM implementation issues, contact Ms. Barbara Driscoll, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C504–05, Research Triangle Park, NC 27711, phone number (919) 541–1051 or by e-mail at: *driscoll.barbara@epa.gov.* Questions regarding the new source review issues contact Raj Rao, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Mail Code C504–03, Research Triangle Park, NC 27711, phone number (919) 541–5344 or by e-mail at: *rao.raj@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Extension of Public Comment Period

The proposed rule was signed by the Administrator on February 3, 2006 and published in the **Federal Register** on February 9, 2006 (71 FR 6718). The EPA has received several requests for additional time to comment on the proposal. Since the 60-day public comment period would have concluded on April 10, 2006, EPA has decided to extend the comment period until July 10, 2006 based on the fact that the PM NAAQS will not be promulgated until September 27, 2006.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2005–0175. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Docket is (202) 566–1742. A reasonable fee may be charged for copying.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* Also, the advance notice of proposed rulemaking was published in the **Federal Register** on February 9, 2006 and is available at *http://www.epa.gov/air/particlepollution/actions.html.*

Dated: March 14, 2006.

Jeffrey S. Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–4369 Filed 3–24–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2003–0079; FRL–8049–4]

RIN 2060–AN26

Implementation of the 8-Hour Ozone National Ambient Air Quality Standard—Phase 1: Reconsideration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing; reopening comment period.

SUMMARY: The EPA is requesting comment on the overwhelming transport classification for 8-hour ozone nonattainment areas as requested in a petition for reconsideration of EPA's final rule to implement the 8-hour ozone national ambient air quality standard (NAAQS or standard). We are requesting comment on the draft guidance document entitled ''Criteria For Assessing Whether an Ozone Nonattainment Area is Affected by Overwhelming Transport,'' and we are reopening the comment period on our proposed rule regarding how the Clean Air Act (CAA) section 172 requirements would apply to an area that might receive an overwhelming transport classification. In the Phase 1 Rule to Implement the 8-Hour Ozone NAAQS we stated that we were considering the comments we received on the issue of applicable requirements for these subpart 1 areas and would address them when we issued guidance on assessing overwhelming transport. Consequently, today's action takes comment on the overwhelming transport guidance and on the applicable requirements that would apply to areas receiving the overwhelming transport classification. In addition, EPA is holding a public hearing on April 12, 2006.

DATES: Comments must be received on or before May 12, 2006 on both the proposed rule and reopening on the June 2, 2003 proposal. A public hearing will be held in Research Triangle Park, North Carolina, on April 12, 2006, and will convene at 10 a.m. and will end when those preregistered to provide testimony have done so and when others in attendance at that time have had an opportunity to do so. Because of the need to resolve the issues in this document in a timely manner, EPA will not grant requests for extensions of the public comment period. For additional information on the public hearing, see the **ADDRESSEES** section of this preamble.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2003–0079, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov*. Attention Docket ID No. EPA–HQ–OAR–2003–0079.
- Fax: The fax number of the Air Docket is (202) 566–1741. Attention Docket ID No. EPA–HQ–OAR–2003–0079.

• Mail: EPA Docket Center, EPA West (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2003–0079, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• Hand Delivery: EPA Docket Center (Air Docket), Attention Docket ID No. EPA–HQ–OAR–2003–0079, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2003–0079. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov*, or e-mail. The Federal *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.govindex.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the fax number is (202) 566–1749.

Public Hearing. A public hearing will be held on April 12, 2006, beginning at 10 a.m. and ending when those preregistered to provide testimony have done so and when others in attendance at that time have had an opportunity to do so. The public hearing will be held at the Environmental Protection Agency, Building C, Room C111A, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27709. Persons wishing to speak at the public hearing need to contact: Ms. Pamela Long, at telephone number (919) 541–0641 or by e-mail at *long.pam@epa.gov*. Oral testimony may be limited to 3 to 5 minutes depending on the number of people who sign up to speak. Commenters may also supplement their oral testimony with written comments. The hearing will be limited to the subject matter of this document. The public hearing schedule, including the list of speakers, will be posted on EPA's Web site at: *http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr.* A verbatim transcript of the hearing and written statements will be made available for copying during normal working hours at the EPA Docket Center (Air Docket) at the address listed above for inspection of documents.

FOR FURTHER INFORMATION CONTACT: For general information: Mr. John Silvasi, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5666, fax number (919) 541–0824 or by e-mail at *silvasi.john@epa.gov* or Ms. Denise Gerth, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5550, fax number (919) 541–0824 or by e-mail at *gerth.denise@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

b. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

d. Describe any assumptions and provide any technical information and/or data that you used.

e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

f. Provide specific examples to illustrate your concerns, and suggest alternatives.

g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

h. Make sure to submit your comments by the comment period deadline identified.

Outline

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I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

II. Background

In the Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard (NAAQS or

standard)—Phase 1 Rule—(April 30, 2004; 69 FR 23951), we established an ''overwhelming transport area'' (OTA) classification for certain areas that were not subject to classification under subpart 2 of part D of the CAA and were thus subject only to subpart 1 (subpart 1 ozone areas). We established three criteria that subpart 1 ozone areas must meet to receive the overwhelming transport classification:

- The area meets the criteria as specified for rural transport areas under section 182(h) of the CAA;
- Transport of ozone and/or precursors into the area is so overwhelming that the contribution of local emissions to observed 8-hour ozone concentration above the level of the NAAQS is relatively minor; and
- The Administrator finds that sources of volatile organic compounds (VOC) and, where the Administrator determines relevant, nitrogen oxides (NO_X) emissions within the area do not make a significant contribution to the ozone concentrations measured in other areas.

In the preamble of the Phase 1 Rule, we explained that an area will be classified as an OTA upon full approval of an analysis that demonstrates that the nonattainment problem in the area is due to ''overwhelming transport.'' We indicated that we would issue guidance more fully explaining how to assess whether an area was affected by overwhelming transport. We indicated that the existing guidance on overwhelming transport needed to be updated and that we were retracting that guidance.

On June 29, 2004, Earthjustice filed a Petition for Reconsideration (Petition) on behalf of several environmental organizations, seeking reconsideration of certain specified aspects of the Phase 1 Rule. We responded to the Petition in letters dated September 23, 2004 and January 10, 2005 granting some aspects of their Petition and denying others. In the January 10, 2005 letter, we granted reconsideration of the overwhelming transport classification because the overwhelming transport guidance was not publicly available during the comment period on the Phase 1 Rule. We also stated that we would request public comments on our draft revision of the overwhelming transport guidance and simultaneously reopen the comment period of the June 2, 2003 (68 FR 32802) proposed rule to implement the 8-hour ozone NAAQS. Specifically, we are reopening the comment period on section VI.4. of the June 2, 2003 proposed rule (68 FR 32813) that addresses the provisions that would apply to OTAs.

Today, we are providing additional information and soliciting comment on issues related to the overwhelming transport classification. We are soliciting comment on the following three issues, which are described in more detail in section III of this preamble: (1) Overwhelming transport classification; (2) the overwhelming transport guidance, which provides more detail on the analyses that can be used to show whether an area meets the second and third eligibility criteria; and (3) the control requirements that apply under subpart 1 to an area that receives the OTA classification.

III. Today's Action

A. Invitation for Comment on Draft Guidance on Criteria for Assessing Whether an Ozone Nonattainment Area Is Affected by Overwhelming Transport

Criteria for Determining Overwhelming Transport

a. *Background.* The Phase 1 Rule established § 51.904(a), in which we created an overwhelming transport classification that would be available to subpart 1 ozone areas that demonstrate: (1) They meet the definition of a rural transport area in section 182(h); (2) they are significantly affected by overwhelming transport from one or more upwind areas; and (3) their emissions do not significantly affect a downwind area.

Qualifying areas under the current rule are those that meet that part of the definition of a rural transport area in section 182(h) that requires that an area not be in or adjacent to a C/MSA.[1] We are aware of only seven subpart 1 ozone areas that could potentially qualify under the portion of § 51.904(a)(1) which requires that the area not be in or adjacent to a C/MSA:

1. Hancock, Knox, Lincoln and Waldo Counties, Maine;
2. Essex County, New York (Whiteface Mountain);
3. Murray County, Georgia (Chattahoochee National Forest);
4. Benzie County, Michigan;
5. Door County, Wisconsin;
6. Huron County, Michigan; and
7. Mason County, Michigan.

The EPA's June 2, 2003 proposal referenced an EPA guidance document that States should use when developing their demonstration that contribution of sources in one or more other areas are an overwhelming cause of air quality violations in the area relating to the overwhelming transport classification. However, at the time we issued the final Phase 1 Rule, we noted that the overwhelming transport guidance needed to be updated and that we would address the control requirements applicable to OTAs in the Phase 2 Rule. In the Phase 2 Rule that we issued on November 29, 2005 (70 FR 71612), we stated that we granted reconsideration of the overwhelming transport classification on January 10, 2005 and intended to publish a proposed rule on the overwhelming transport classification in the future. As a result, we did not take final action on the control requirements applicable to OTAs in the Phase 2 Rule but stated that we planned to address them in the proposed rule on the overwhelming transport classification. Today's action takes comment on both the overwhelming transport guidance and the control requirements applicable to areas that receive the overwhelming transport classification. As noted above, the Petition stated that the provision for an overwhelming transport classification in the Phase 1 Rule relies on guidance that was not publicly available during the comment period and that the guidance was still unavailable at the time the Petition was submitted.

b. *Request for Comment.* On January 10, 2005, we granted the Petition on this issue and are now soliciting comment on the overwhelming transport classification as well as the draft guidance document, ''Criteria For Assessing Whether an Ozone Nonattainment Area is Affected by Overwhelming Transport,'' which is found at the following Internet Web site: *http://www.epa.gov/ttn/scram/.* This draft guidance outlines EPA's recommended approach for demonstrating that an area should receive the OTA classification.

As described in the draft guidance, the Phase 1 Rule established three criteria an area must meet for the area to be classified as an OTA [§ 51.904(a)]. Two of these criteria are the focus of the overwhelming transport guidance. The two criteria concern: (1) Whether an area is being affected by overwhelming transport; and (2) whether the area is significantly contributing to another nonattainment area. Analyses for both of these criteria will involve assembling emissions, air quality, meteorological, and/or photochemical grid modeling data; and making an informed decision regarding contribution based on the results of the composite set of analyses. This aggregation of data is generally referred to as ''weight of evidence'' and is discussed in detail in EPA modeling

[1] CSMA means either Consolidated Metropolitan Statistical Area or Metropolitan Statistical Area as defined by the Office of Management and Budget (OMB) in 1999 (June 30, 1999; 64 FR 35548).

guidance on 8-hour ozone attainment demonstrations.[2] The end product of this weight of evidence determination is a document which describes analyses performed, data bases used, key assumptions and outcomes of each analysis, and why a State believes that the evidence, viewed as a whole, supports a conclusion that the area is overwhelmingly affected by transport and does not significantly contribute to downwind problems.

It is expected that an area petitioning for an OTA classification would complete a full analysis consisting of evidence from multiple forms of weight of evidence analyses as described within this guidance. For an area to be classified as an OTA, the large majority of the tests identified in the ''Criteria for Assessing Whether an Ozone Nonattainment Area is Affected by Overwhelming Transport'' would have to meet the criteria of § 51.904(a)(2) and (3).

B. Proposed Requirements That Apply to Subpart 1 Ozone Areas That Receive the Overwhelming Transport Classification

1. General Background

Subpart 1 ozone areas are subject to the requirements of section 172(c) of the CAA. The plan provisions required to be submitted under section 172(c) include reasonably available control technology (RACT) and reasonably available control measure (RACM) plans, attainment demonstrations, reasonable further progress (RFP) plans, emission inventories, new source review (NSR) plans, and contingency measures. In the June 2, 2003 proposal (68 FR 32814), we proposed that a subpart 1 ozone area classified as an OTA would be treated similar to an area classified as marginal under subpart 2 for purposes of emission control requirements. We are reopening the comment period on a number of these proposed requirements, as described below, and we are also providing additional detail regarding these requirements.

We are not proposing that areas classified as overwhelming transport be treated differently than other subpart 1 areas for purposes of NSR, conformity and emissions inventory requirements. Thus, this proposal does not address these requirements.

2. Requirements for RACT/RACM

a. *Background.* Section 172(c)(1) of the CAA requires implementation of all RACT/RACM as expeditiously as practicable. For subpart 1 ozone areas, we proposed on June 2, 2003 an option interpreting RACT for ozone nonattainment areas for the 8-hour NAAQS similar to the Agency's interpretation for pollutants other than ozone (68 FR 32838). Under this option, for the 8-hour ozone NAAQS, if the area is able to demonstrate attainment of the standard as expeditiously as practicable with emission control measures in the SIP, then RACT will be met, and additional measures would not be required as being reasonably available. However, we did not directly propose RACT requirements for OTA areas and only proposed that ''* * * the area would be treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements.''

b. *Request for Comment.* We are reopening the comment period, with respect to OTAs only, on the proposed approach described above for the RACT/RACM requirements. Section 172(c)(1) establishes the requirements for subpart 1 and RACT is included as a subset of RACM. Our long-standing interpretation of the RACM provision is that areas need only submit such RACM as will contribute to timely attainment and meet RFP, and that measures which might be available but would not advance attainment or contribute to RFP need not be considered RACM. This interpretation has been upheld in several recent court cases. *See Sierra Club* v. *EPA,* 294 F.39 155, 162 (DC Cir., 2002) (concerning the Metropolitan Washington, DC, attainment demonstration) and *Sierra Club* v. *EPA,* No. 01–60537 (5th Cir., 2002) (concerning the Beaumont attainment demonstration). Since subpart 1 RACT is a subset of RACM, these cases also support a conclusion that, where we are dealing only with section 172 RACT, it is reasonable to require only such RACT as will meet RFP and advance attainment. Consistent with our interpretation of RACM, EPA believes RACT would be met by control measures in a SIP demonstrating attainment of the standard as expeditiously as practicable and meeting RFP. Additionally, this approach has the benefit of providing States with flexibility to determine which control strategies are the most effective in reaching attainment as expeditiously as practicable. Specifically, we are proposing that a State would be considered to meet the RACT/RACM requirements for an OTA by submitting an attainment demonstration SIP demonstrating that the area will attain as expeditiously as practicable.

3. Attainment Demonstration

a. *Background.* Section 172(c)(1) of the CAA requires subpart 1 ozone areas to submit plan provisions that provide for attainment of the NAAQS. General requirements for an attainment demonstration are contained in 40 CFR 51.112. The June 2, 2003 proposal did not propose requirements for the attainment demonstration for OTAs, but only proposed that ''* * * the area would be treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements'' and marginal areas are not required to submit attainment demonstrations (see CAA section 182(a), last paragraph prior to paragraph (b)).

b. *Request for Comment.* The proposal noted that regional scale modeling for national rules, such as the NO_X SIP Call and Tier II motor vehicle tailpipe standards, projects major ozone benefits for the 3-year period of 2004–2006. In addition, subsequent modeling used to support the Clean Air Interstate Rule (CAIR) indicates that regional control measures will be sufficient to bring many areas into attainment no later than 2010. As described in section VI.B.1, of the Air Quality Modeling Technical Support Document for the final CAIR, we project that all of the potential OTAs would be attainment for the 8-hour ozone standard under the assumptions in the 2010 base case. Thus, we anticipate all OTAs will be in attainment by 2010 without adopting additional local controls.

We believe that an OTA should not be required to perform the detailed photochemical grid modeling needed to develop an attainment demonstration where there is existing modeling that shows that the area will attain in the short term. It would not be reasonable to require these areas to expend the amount of resources needed to perform a complex modeling analysis. Since attainment in the OTA is dependent on control measures chosen and adopted by the upwind nonattainment areas, an attainment demonstration specific to an OTA would be redundant. We anticipate that OTAs will be included in State, regional or national modeling analyses conducted by other, upwind nonattainment areas or by EPA. Where such modeling exists, it could be used to demonstrate attainment of an OTA. The demonstration must include modeling results and analyses that the State is relying on to support its claim.

[2] Guidance on the Use of Models and Other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS (EPA–454–05–002, October 2005). *http://www.epa.gov/scram001/guidance/guide/8-hour-o3-guidance-final-version[1]pdf.*

Such modeling should be consistent with EPA guidance and should be applicable and appropriate for the area.[3] Because it is impossible for an OTA to demonstrate attainment on its own due to their nature, the attainment demonstration for the area must rely, to a significant extent, on control of sources outside the OTA. Consequently, as noted in the Phase 2 ozone implementation rule, we intend to determine on a case-by-case basis whether the area submitting an attainment demonstration that is upwind of an OTA needs to commit to submit a mid-course review (MCR). Such a MCR would serve the purpose of determining whether the OTA area is on track to attain the 8-hour standard by its attainment date as well as whether the upwind area is on track.

We therefore propose that a State must submit a modeled demonstration of attainment that addresses the OTA and shows that the OTA will attain as expeditiously as practicable, but the State may rely on prior modeling. We propose that no additional modeled attainment demonstration would need to be developed for OTAs where (1) Upwind areas complete attainment demonstrations with modeling domains including the OTA or (2) regional or national modeling exists that is appropriate for use in the area shows that the OTA attains as expeditiously as practicable.

In the Phase 1 Rule, we provided that we would approve an attainment date consistent with the attainment date timing provision of section 172(a)(2)(A) at the time we approve an attainment demonstration for the area [§ 51.904(b)]. We believe the section 172(a)(2)(A) provisions that allow an area to have an attainment date up to 10 years following designation (based on the severity of the nonattainment and the availability and feasibility of controls) would allow consideration for OTAs of the attainment dates of upwind nonattainment areas that contribute to the downwind area's problem, and the implementation schedules for controls in upwind areas that contribute.

4. Reasonable Further Progress

a. *Background.* Section 172(c)(2) of the CAA requires subpart 1 ozone areas to submit plan provisions which require RFP. The June 2, 2003 proposal did not discuss the requirement for RFP specifically for OTAs. However, we did propose that, generally, OTAs would be treated similar to areas classified as marginal under subpart 2 for purposes of emission control requirements.[4]

b. *Request for Comment.* Similar to the approach followed in the final Phase 2 Rule for subpart 1 areas with attainment dates within 5 years after designation, we propose that an OTA with an approved attainment demonstration would be considered to have met the RFP obligation with the measures that will bring the area into attainment by the area's attainment date. That is, RFP is met by demonstrating the area could attain the standard as expeditiously as practicable. However, an OTA's attainment date will depend on when controls in upwind areas will be implemented. Thus, an OTA may have an attainment date that is later than 6 years after designation. Because an OTA will have little control over the emissions reductions needed for attainment, we are proposing that regardless of the OTA's attainment date, RFP will be met so long as the area demonstrates attainment as expeditiously as practicable. We request additional comment on this position.

5. Contingency Measures

a. *Background.* Under the CAA, subpart 1 ozone areas must include in their SIPs contingency measures consistent with section 172(c)(9). The general requirements for nonattainment plans under section 172(c)(9) specify that each plan must contain additional measures that will take effect without further action by the State or EPA if an area either fails to meet a RFP milestone or to attain the 8-hour ozone standard by the applicable date. Contingency measures must accompany the attainment demonstration SIP. All subpart 1 ozone areas and subpart 2 areas other than marginal areas need contingency measures. The June 2, 2003 proposal did not discuss the requirement for contingency measures specifically for OTAs. However, we did propose that "* * * the area would be treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements" and marginal areas are not required to submit contingency measures (see CAA section 182(a), last paragraph prior to paragraph (b)).

b. *Request for Comment.* By definition [§ 51.904(a)(2)], the contribution of local emissions to observed ozone concentrations in the OTA is relatively minor. Thus, the effect of local control measures, including contingency measures from sources in the OTA, would also be minor. The EPA believes more effective contingency measures will be contained in the upwind areas' SIPs. Because upwind areas contribute overwhelmingly to nonattainment in the downwind OTA, we believe that OTAs may rely on contingency measures adopted by the upwind contributing areas; however, such contingency measures must be structured to be triggered by a failure in the OTA itself to make reasonable RFP or attain the standard by the applicable date.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, 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.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action" because it raises novel legal or policy issues arising out of legal mandates. As such this action will be submitted to OMB for review.

B. Paperwork Reduction Act

The information collection requirements in this rule will be addressed along with those covering the Phase 1 Rule (April 30, 2004; 69 FR 23951) and the Phase 2 Rule (November 29, 2005; 70 FR 71612) which will be submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them other than to the extent required by statute.

This rule provides an optional framework for the States to develop SIPs

[3] If an assessment indicates that a regional modeling analysis is not applicable to a particular nonattainment area, additional local modeling would be required.

[4] Areas classified marginal under subpart 2 are not subject to RFP requirements.

for certain areas (viz., those affected by overwhelming transport of ozone and its precursors) to achieve a new or revised NAAQS. This framework reflects the requirements prescribed in CAA sections 110 and part D, subpart 1 of title I. In that sense, the present final rule does not establish any new information collection burden on States. Had this rule not been developed, States would still have the legal obligation under law to submit nonattainment area SIPs under part D of title I of the CAA within specified periods after their nonattainment designation for the 8-hour ozone standard, and the SIPs would have to meet the requirements of part D; however, without this rule, a few States would have less flexibility in planning for the areas noted above.

This rule does not establish requirements that directly affect the general public and the public and private sectors, but, rather, interprets the statutory requirements that apply to States in preparing their SIPs. The SIPs themselves will likely establish requirements that directly affect the general public, and the public and private sectors.

The EPA has not yet projected cost and hour burden for the statutory SIP development obligation but has started that effort and will shortly prepare an Information Collection Request (ICR) request. However, EPA did estimate administrative costs at the time of promulgation of the 8-hour ozone standard in 1997. See Chapter 10 of U.S. EPA 1997, Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, N.C., July 16, 1997. Assessments of some of the administrative cost categories identified as a part of the SIP for an 8-hour standard are already conducted as a result of other provisions of the CAA and associated ICRs (*e.g.* emission inventory preparation, air quality monitoring program, conformity assessments, NSR, inspection and maintenance program).

The burden estimates in the ICR for this rule are incremental to what is required under other provisions of the CAA and what would be required under a 1-hour standard. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule. However, the failure to have an approved ICR for this rule does not affect the statutory obligation for the States to submit SIPs as required under part D of the CAA.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (See 13 CFR 12.201); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In promulgating the Phase 1 and Phase 2 Rules, we concluded that those actions did not have a significant economic impact on a substantial number of small entities. For those same reasons, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. We continue to be interested in the potential impacts of our proposed rules on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. In promulgating the Phase 1 and Phase 2 Rules, we concluded that it was not subject to the requirements of sections 202 and 205 of the UMRA. For those same reasons, our reconsideration and reopening of the comment period

on the proposed rule is not subject to the UMRA.

The EPA has determined that this proposed rule contains no regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This proposed reconsideration requests comment on a broader applicability of the overwhelming transport classification and reopens the public comment period on the proposed rule on how the CAA section 172 requirements would apply. For the same reasons stated in the Phase 1 and Phase 2 Rules, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' This proposed rule does not have ''Tribal implications'' as specified in Executive Order 13175.

The purpose of this proposed rule is to reopen the comment period on the proposed rule on how the CAA section 172 requirements would apply to such areas. These issues concern the implementation of the 8-hour ozone standard in areas designated nonattainment for that standard. The CAA provides for States and Tribes to develop plans to regulate emissions of air pollutants within their jurisdictions. The Tribal Authority Rule (TAR) gives Tribes the opportunity to develop and implement CAA programs such as the 8-hour ozone NAAQS, but it leaves to the discretion of the Tribes whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

For the same reasons stated in the Phase 1 and Phase 2 Rules, this proposed rule does not have Tribal implications as defined by Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since no Tribe has implemented a CAA program to attain the 8-hour ozone NAAQS at this time. Furthermore, this proposed rule does not affect the relationship or distribution of power and responsibilities between the Federal government and Indian Tribes. The CAA and the TAR establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this proposed rule does nothing to modify that relationship. Because this proposed rule does not have Tribal implications, Executive Order 13175 does not apply.

While the proposed rule would have Tribal implications upon a Tribe that is implementing such a plan, it would not impose substantial direct costs upon it nor would it preempt Tribal law.

Although Executive Order 13175 does not apply to this proposed rule, EPA contacted Tribal environmental professionals about the development of this proposed rule on the ''Tribal Designations and Implementation Work Group'' conference call; a subsequent meeting summary was sent to over 50 Tribes.

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

Executive Order 13045: ''Protection of Children From Environmental Health 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 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.

This proposed rule addresses one aspect of the Phase 1 Rule that the Agency was requested to reconsider and reopens the comment period on the proposed rule on how the CAA section 172 requirements would apply to such areas. The proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the 8-hour ozone NAAQS on children. The results of this evaluation are contained in 40 CFR part 50, National Ambient Air Quality Standards for Ozone, Final Rule (July 18, 1997; 62 FR 38855–38896, specifically, 62 FR 38860 and 62 FR 38865).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions That Significantly Affect Energy Supply, Distribution, or Use,'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. This proposed rule affects only a small number of relatively rural areas by its very nature. Recent EPA modeling projects that all of these areas will attain the 8-hour ozone by 2010 without any additional local emission controls.[5] It does not require States or sources to take any particular actions, but merely provides an alternate mechanism for States to plan for attainment of such areas.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary

[5] Technical Support Document for the Final Clean Air Interstate Rule Air Quality Modeling, U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711. March 2005. Appendix E. Average Ambient and Projected 2010 and 2015 Base and CAIR Control 8-hour Ozone Concentrations. Available at: *http://www.epa.gov/cair/pdfs/finaltech02.pdf.*

consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

The EPA will encourage the States and Tribes to consider the use of such standards, where appropriate, in the development of the implementation plans.

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

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionate high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA concluded that the Phase 1 and Phase 2 Rules should not raise any environmental justice issues; for the same reasons, this proposal should not raise any environmental justice issues. The health and environmental risks associated with ozone were considered in the establishment of the 8-hour, 0.08 ppm ozone NAAQS. The level is designed to be protective with an adequate margin of safety. The proposed rule provides a framework for improving environmental quality and reducing health risks for areas that may be designated nonattainment.

List of Subjects in 40 CFR Part 51

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

Dated: March 21, 2006.

William L. Wehrum,

Acting Assistant Administrator for Air and Radiation.

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

PART 51—[AMENDED]

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

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

Subpart X—Provisions for Implementation of the 8-Hour Ozone National Ambient Air Quality Standard

2. Section 51.919 is added to read as follows:

§ 51.919 What requirements apply to overwhelming transport areas (OTAs) for modeling and attainment demonstration, reasonable further progress, and reasonably available control technology?

(a) *Attainment demonstration.* (1) An area classified as an OTA under '§ 1.904 must submit an attainment demonstration meeting the requirements of § 51.112, which may be based on:

(i) photochemical grid modeling conducted for the OTA;

(ii) attainment demonstrations completed by areas upwind of the OTA, where the modeling domains include the OTA; or

(iii) regional or national modeling that demonstrates the area will attain the 8-hour standard.

(2) A mid-course review (MCR) is not required for an area classified as an OTA under § 51.904.

(b) *Reasonable further progress (RFP).* An area classified as an OTA under § 51.904 with an approved attainment demonstration is considered to have met the RFP obligation under section 172(c)(2) of the CAA with the measures that will bring the area into attainment by the attainment date.

(c) *Reasonably available control technology (RACT) and reasonably available control measures (RACM).* For an area classified as an OTA under § 51.904, the State shall meet the RACT and RACM requirements of section 172(c)(1) by submitting an attainment demonstration SIP showing that the area will attain as expeditiously as practicable, taking into consideration emissions reductions in upwind nonattainment areas that contribute to the OTAs air quality.

(d) *Contingency measures.* Contingency measures must accompany the attainment demonstration SIP. All subpart 1 ozone areas and subpart 2 areas other than marginal areas need contingency measures. Overwhelming transport areas may rely on contingency measures adopted by the upwind contributing areas; however such contingency measures must be structured to be triggered by a failure in the OTA itself to make RFP or attain the standard by the applicable date.

[FR Doc. 06–2909 Filed 3–24–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 142

[EPA–HQ–OW–2002–0061; FRL–8046–5]

National Primary Drinking Water Regulations; Ground Water Rule; Notice of Data Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proprosed rule; notice of data availability.

SUMMARY: On May 10, 2000, EPA published the proposed Ground Water Rule (GWR), a national primary drinking water regulation, in the **Federal Register**. The purpose of the proposed rule is to provide for increased protection against microbial pathogens in public water systems that use ground water sources. In the proposed rule, EPA presented 16 occurrence studies. Since the rule was proposed, new data have become available that further delineate pathogen and fecal indicator occurrence in groundwater. The purpose of this notice of data availability is to present additional occurrence studies that the Agency may use in performing its economic analysis of the final GWR, and to solicit comment on those additional studies and on whether EPA should consider any additional ground water microbial occurrence data not mentioned in the proposed rule or in this notice.

DATES: Comments must be received on or before April 26, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2002–0061, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *OW-Docket@epa.gov*.
- Mail: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- Hand Delivery: Deliver your comments to Water Docket, EPA Docket Center, Environmental Protection Agency, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0061. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2002–0061. EPA's policy is that all comments received will be included in the public docket without change and may be