requirements discussed above might not apply. However, EPA is taking this approach under consideration; it is not today proposing this approach.

**List of Subjects in 40 CFR Part 81**

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

**Authority:** 42 U.S.C. 7401-7671q.

**Dated:** August 25, 1997.

Felicia Marcus,
Regional Administrator, Region IX.

**DATES:**

One-hour ozone NAAQS.

**Plan (SIP) to reach attainment of the one-hour ozone NAAQS prior to enactment of the 1990 Amendments, such as the Dallas/Fort Worth area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. Ozone nonattainment areas with design values between 0.138 and 0.16 parts per million (ppm), such as the Dallas/Fort Worth area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to show progress towards attainment, and attainment of the ozone NAAQS as expeditiously as practicable but no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the Act.

**B. Reclassification to Serious**

The EPA has the responsibility, pursuant to section 181(b)(2)(A) of the Act, of determining, within six months of the applicable attainment date (including any extension of that date) whether an ozone nonattainment area has attained the ozone NAAQS. Under section 181(b)(2)(A) of the Act, if EPA finds that a moderate area has not attained the ozone NAAQS, it is reclassified by operation of law to the higher of the next higher classification or to the classification applicable to the area's design value at the time of the finding. Pursuant to section 182(b)(2)(B) of the Act, EPA must publish a notice in the Federal Register identifying areas which failed to attain the standard and therefore must be reclassified by operation of law.

The one-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than one day per year over any three year period. See 40 CFR section 50.9 and 40 CFR part 50, Appendix H. The EPA makes attainment determinations for ozone nonattainment areas using the most recently available, quality-assured air quality data covering the three-year period up to and including the attainment date. The EPA has determined that the Dallas/Fort Worth area's air quality has not met the moderate area attainment deadline of November 15, 1996, based upon all 1994, 1995, and 1996 (through November 15) quality-assured air quality data available to the Agency.

Table 1 lists the three-year average number of days over the one-hour ozone standard at each State and Local Air Monitoring Stations/National Air Monitoring Stations (SLAMS/NAMS) monitoring site in the Dallas/Fort Worth metropolitan area for the period 1994 through 1996 and each monitor's design value for that period. A complete listing of the ozone exceedences at each monitor as well as EPA's calculations of the design values can be found in the docket file.
TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCES DAYS PER YEAR IN THE DALLAS/FORT WORTH AREA [1994–1996]

<table>
<thead>
<tr>
<th>Site</th>
<th>AIRS ID number</th>
<th>Number of days over the standard (1994–1996)</th>
<th>Average number of exceedance days per year</th>
<th>Site design value (PPM)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Frisco</td>
<td>48–085–0005</td>
<td>4</td>
<td>1.3</td>
<td>0.126</td>
</tr>
<tr>
<td>Nuestra Drive (Galleria)</td>
<td>48–113–0045</td>
<td>7</td>
<td>2.3</td>
<td>0.134</td>
</tr>
<tr>
<td>Hinton Street</td>
<td>48–113–0069</td>
<td>1</td>
<td>0.3</td>
<td>0.121</td>
</tr>
<tr>
<td>Denton County Airport</td>
<td>48–121–0033</td>
<td>12</td>
<td>4.0</td>
<td>0.139</td>
</tr>
<tr>
<td>Plano Parking/South Colli...</td>
<td>48–121–0054</td>
<td>4</td>
<td>1.7</td>
<td>0.127</td>
</tr>
<tr>
<td>Meacham Field</td>
<td>48–439–1002</td>
<td>4</td>
<td>1.3</td>
<td>0.126</td>
</tr>
<tr>
<td>Keller</td>
<td>48–439–2003</td>
<td>12</td>
<td>4.0</td>
<td>0.139</td>
</tr>
<tr>
<td>Red Bird Airport</td>
<td>48–113–0087</td>
<td>2</td>
<td>0.7</td>
<td>0.118</td>
</tr>
</tbody>
</table>

1 The Red Bird Airport was activated in 1995. The design value is the third highest reading based on two years of data.

As can be seen from Table 1, Average Number of Ozone Exceedances, DFW, six of the eight monitoring sites have averaged more than one exceedance day per year in the 1994–1996 period. Therefore, EPA has determined that the Dallas/Fort Worth metropolitan area did not attain the one-hour ozone NAAQS by the statutory deadline for moderate areas of November 15, 1996.

Additionally, as shown in Table 2, 1996 Ozone Exceedances, DFW, four monitors in the Dallas/Fort Worth area recorded two or more exceedances in 1996. Accordingly, the area would not qualify for a one-year extension due to the multiple exceedances.

TABLE 2.—OZONE EXCEEDANCES IN DALLAS/FORT WORTH AREA—1996

<table>
<thead>
<tr>
<th>Site</th>
<th>AIRS ID number</th>
<th>Site type</th>
<th>Date</th>
<th>PPM</th>
</tr>
</thead>
<tbody>
<tr>
<td>Denton County Airport</td>
<td>48–121–0033</td>
<td>SLAMS</td>
<td>July 8, 1996</td>
<td>0.131</td>
</tr>
<tr>
<td>Denton County Airport</td>
<td>48–121–0033</td>
<td>SLAMS</td>
<td>September 6, 1996</td>
<td>0.139</td>
</tr>
<tr>
<td>Meacham Field</td>
<td>48–439–1002</td>
<td>SLAMS</td>
<td>July 3, 1996</td>
<td>0.127</td>
</tr>
<tr>
<td>Meacham Field</td>
<td>48–439–1002</td>
<td>SLAMS</td>
<td>July 8, 1996</td>
<td>0.126</td>
</tr>
<tr>
<td>Keller</td>
<td>48–439–2003</td>
<td>SLAMS</td>
<td>September 6, 1996</td>
<td>0.131</td>
</tr>
<tr>
<td>Keller</td>
<td>48–113–0087</td>
<td>SLAMS</td>
<td>June 3, 1996</td>
<td>0.135</td>
</tr>
<tr>
<td>Red Bird Airport</td>
<td>48–113–0087</td>
<td>SLAMS</td>
<td>July 3, 1996</td>
<td>0.144</td>
</tr>
</tbody>
</table>

The EPA also believes that the appropriate reclassification of the area is too serious. Section 181(b)(2) requires the area to be reclassified to the higher of the next highest classification or the classification appropriate to the design value at the time of the nonattainment finding. The next highest classification for the Dallas/Fort Worth area is serious. Based on the design value calculated using data from the SLAMS/NAMS network, the area's design value is 0.139 ppm. The area's design value is calculated in accordance with 40 CFR part 91, Air Quality Designations and Classifications: Final Rule, 56 FR 56697 (November 6, 1991). See also the June 18, 1990, Memorandum from William G. Laxton, Director of the Technical Support Division, Office of Air Quality Planning and Standards for the method of calculating ozone design values.

C. SIP Requirements for Serious Ozone Nonattainment Areas

Under section 181(a)(1) of the Act, the attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) will be completed as expeditiously as possible, but no later than November 15, 1999. Under section 182(i), these reclassified areas are required to submit SIP revisions addressing the serious area requirements for the one-hour ozone NAAQS in section 182(c). Section 182(i) further provides that the Administrator may adjust the statutory schedules for submittal of these SIP revisions. Accordingly, EPA is exercising this authority to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification. The EPA believes that a 12 month schedule is appropriate because the attainment date for serious areas, November 15, 1999, is little more than two years away and the State will need to expedite adoption and implementation of controls to meet that deadline.

Under section 182(c), the requirements for serious ozone nonattainment areas include, but are not limited to, the following: (1) Attainment and reasonable further progress demonstrations, (2) an enhanced vehicle inspection and maintenance program, (3) clean-fuel vehicle programs, (4) a 50 ton-per-year major source threshold, (5) more stringent new source review requirements, (6) an enhanced monitoring program, and (7) contingency provisions.

The EPA has issued a “General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990” that sets forth the Agency's preliminary views on how it will act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). This guidance should be followed in the development of the serious ozone nonattainment area SIP revision.

The EPA has recently promulgated an eight-hour ozone standard (62 FR 38856, July 18, 1997). In order to facilitate the transition from the one-hour to the eight-hour NAAQS, EPA may issue additional guidance to assist states in meeting the serious area requirements.

II. Proposed Action

The EPA has evaluated this action for consistency with the Act, EPA regulations, and EPA policy. The EPA has determined that a reclassification of the Dallas/Fort Worth ozone nonattainment area from moderate to
serious is necessary to satisfy the requirements of the Act and the policy set forth in the General Preamble. The EPA is proposing today to reclassify the Dallas/Fort Worth ozone nonattainment area to serious.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today’s proposal is a “significant regulatory action” within the meaning of the E.O., and therefore should be subject to Office of Management and Budget review, economic analysis, and the requirements of the E.O. See E.O. 12866, section 6(a)(3). The E.O. defines, in section 3(f), a “significant regulatory action” as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including: (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; (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.

The EPA has determined that the finding of failure to attain proposed today, as well as the establishment of SIP submittal schedules resulting from a bump-up, would result in none of the effects identified in E.O. 12866 section 3(f). Under section 181(b)(2) of the Act, findings of failure to attain are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Sections 603 and 604 of 5 U.S.C. Alternatively, EPA may certify that the rule will not have a significant economic 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. EPA is proposing today to reclassify the Dallas/Fort Worth area to serious. These findings do not set forth in the General Preamble. The basis for this distinction could be that today’s action constitutes a specific
I. Introduction

1. The Commission is undertaking this rule making to consider whether and in what circumstances to preempt certain state and local zoning and land use ordinances which present obstacles to the rapid implementation of DTV. Such ordinances may inhibit the resiting of antennas made necessary by the implementation of DTV. This issue was brought before the Commission in a “Petition for Further Notice of Proposed Rule Making” filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television (“Petitioners”).

II. Background

2. In its Fifth Report and Order in the DTV proceeding, the Commission adopted an accelerated schedule for construction of DTV transmission facilities. The construction schedule requires affiliates of the top four networks to be on the air with digital signals by May 1, 1999 in the top ten markets and by November 1, 1999 in markets 11-30. All other commercial stations must construct their DTV facilities by May 1, 2002, and noncommercial stations by May 1, 2003. Subject to biennial review and statutory exceptions, all stations are to return their analog spectrum by 2006.

3. The accelerated DTV transition schedule will require extensive tower modification and construction. Petitioners state that local regulations that impair the ability of broadcasters to construct or modify their facilities unless the state or local authority can demonstrate that the regulations comply with Commission regulations. It would also remove from local consideration any regulations based on the environmental or health effects of radio frequency (“RF”) emissions; and (2) interference with other telecommunications signals and consumer electronics devices to the extent that the facility complies with Commission regulations. Petitioners propose that a broadcaster receiving an adverse decision could, within 30 days of the decision, petition the Commission for a declaratory ruling on which the Commission, in turn, would have 30 days in which to act. The Petitioners’ proposed rule would remove from local consideration (1) regulations based on the environmental or health effects of radio frequency (“RF”) emissions; and (2) interference with other telecommunications signals and consumer electronics devices to the extent that the facility complies with Commission regulations. Petitioners propose that a broadcaster receiving an adverse decision could, within 30 days of the decision, petition the Commission for a declaratory ruling on which the Commission, in turn, would have 30 days in which to act.

III. Discussion

5. In its Fifth Report and Order the Commission set out the rationale for an accelerated roll-out of DTV. The Commission found that first, absent a speedy roll-out, other DTV services might achieve levels of penetration that required in the administration of such restrictions can last several months.

4. To facilitate compliance with the DTV construction schedule, Petitioners ask the Commission to adopt a rule allowing the Commission to preempt state and local zoning and other land use regulations to the extent they unreasonably delay the DTV roll-out and other ongoing broadcast transmission facilities construction. The proposed rule provides specific time limits for state and local government action in response to requests for approval of modifications to existing broadcast transmission facilities. The Petitioners’ proposed rule would require action within 21 days with respect to modifications of existing broadcast transmission facilities where no change in location or height is proposed; within 30 days with respect to the relocation of an existing broadcast transmission facility from a currently approved location to another location within 300 feet, or the consolidation of two or more broadcast transmission facilities; or the increase in the height of an existing tower; and within 45 days for all other requests. Failure to act within these time limits would cause the request to be deemed granted. The Petitioners propose that a broadcaster receiving an adverse decision could, within 30 days of the decision, request a declaratory ruling on which the Commission, in turn, would have 30 days in which to act. The Petitioners’ proposed rule would remove from local consideration any regulations based on the environmental or health effects of radio frequency (“RF”) emissions; and (2) interference with other telecommunications signals and consumer electronics devices to the extent that the facility complies with Commission regulations. It would also remove from local consideration regulations concerning tower marking and lighting provided that the facility complies with applicable Commission or Federal Aviation Administration regulations. The Petitioners’ proposed rule would preempt all state and local regulations that impair the ability of licensed broadcasters to construct or modify their facilities unless the state or local authority can demonstrate that the regulator is related to health or safety objectives.

This petition was filed in the Commission’s Digital Television proceeding Fifth Report and Order in MM Docket No. 87-268, FCC 97-116 (April 22, 1997) (Fifth Report and Order), 62 FR 26966 (May 16, 1997). The Commission will, however, treat the Petition as filed pursuant to 47 CFR 1.401 seeking the institution of a new rule making proceeding.