

Dated: January 23, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

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

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(239)(i)(E)(3) to read as follows:

§ 52.220 Identification of plan.

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(c) * * *

(239) * * *

(i) * * *

(E) * * *

(3) Rule 8–3, adopted on March 1, 1978, revised on December 20, 1995.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX89–1–7370; FRL–5967–4]

Clean Air Act Reclassification; Texas-Dallas/Fort Worth Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is finding that the Dallas/Fort Worth (DFW) nonattainment area (Dallas, Tarrant, Collin, Denton Counties, Texas) has not attained the 1-hour ozone national ambient air quality standard (NAAQS) by the applicable attainment date in the Clean Air Act (Act) for moderate ozone nonattainment areas, November 15, 1996. The finding is based on EPA's review of monitored air quality data from 1994 through 1996 for compliance with the 1-hour ozone NAAQS. As a result of this finding, the DFW ozone nonattainment area will be reclassified by operation of law as a serious ozone nonattainment area on the effective date of this action. This **Federal Register** reclassification final rule does not subject the State to sanctions under section 110(m) of the Act. The effect of the reclassification will be to continue progress toward attainment of the 1-hour ozone NAAQS

through the development of a new State Implementation Plan (SIP), due 12 months from the effective date of this action, addressing attainment of that standard by November 15, 1999.

EFFECTIVE DATE: March 20, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Diggs or James F. Davis, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, (214) 665–7214.

SUPPLEMENTARY INFORMATION:

I. Background

Under sections 107(d)(1)(C) and 181(a) of the Act, the DFW area was designated nonattainment for the 1-hour ozone NAAQS and classified as "moderate." See 56 FR 56694 (November 6, 1991). Moderate nonattainment areas were required to show attainment by November 15, 1996 (section 181(a)(1)).

Pursuant to section 181(b)(2)(A) of the Act, EPA has the responsibility for determining, within six months of an area's applicable attainment date, whether the area has attained the 1-hour ozone NAAQS.¹ Under section 181(b)(2)(A), if EPA finds that an area has not attained the 1-hour ozone NAAQS, it is reclassified by operation of law to the next higher classification or to the classification applicable to the area's design value at the time of the finding. Section 181(b)(2)(B) of the Act requires EPA to publish a notice in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law.

If a state does not have the data necessary to show attainment of the NAAQS, it may apply, under section 181(a)(5) of the Act, for a one-year attainment date extension. Issuance of an extension is discretionary, but EPA can exercise that discretion only if the state has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of the ozone NAAQS at

any monitoring site in the nonattainment area in the year preceding the extension year.

A complete discussion of the statutory provisions and EPA policies governing findings of whether an area failed to attain the ozone NAAQS and extensions of the attainment date can be found in the proposal for this action at 62 FR 46238 (September 2, 1997).

II. Proposed Action

On September 2, 1997, EPA proposed to find that the DFW ozone nonattainment area failed to attain the 1-hour ozone NAAQS by the applicable attainment date (62 FR 46238). The proposed finding was based upon ambient air quality data from the years 1994, 1995, and 1996. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on average more than one day per year over this three-year period. Attainment of the 1-hour NAAQS is demonstrated when an area averages one or less days per year over the standard during a three-year period (40 CFR 50.9 and Appendix H). The EPA also proposed that the appropriate reclassification of the area was too serious, based on the area's 1994–1996 design value of 0.139 ppm. This **Federal Register** reclassification final rule is not an action subjecting the State to sanctions described in section 110(m) of the Act. The sanctions provisions of the Act would only apply if the State failed to submit a revised DFW SIP or submitted a revised DFW SIP that was disapproved by the EPA. For a complete discussion of the DFW ozone data and method of calculating both the average number of days over the ozone standard and the design value, see 62 FR 46238.

Finally, EPA proposed to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification. The requirements for serious ozone nonattainment areas are outlined in section 182(c) of the Act.

III. Response to Comments

The EPA received 156 comment letters in response to its September 2, 1997 proposal. The EPA wishes to express its appreciation to each of these individuals and organizations for taking the time to comment on the proposal. Each raised important issues to which EPA welcomes the opportunity to respond.

As described above, EPA's proposal was composed of two elements: (1) a finding of failure to attain by the statutory deadline of November 15, 1996, (2) a 12-month schedule for submittal of the revised SIP.

¹ On July 18, 1997 (62 FR 38856), EPA revised the ozone NAAQS to establish an 8-hour standard; however, in order to ensure an effective transition to the new 8-hour standard, EPA also retained the 1-hour NAAQS for an area until such time as it determines that the area meets the 1-hour standard. See revised 40 CFR 50.9 at 62 FR 38894. As a result of retaining the 1-hour standard, the Act part D, subpart 2, *Additional Provisions for Ozone Nonattainment Areas*, including the reclassification provisions of section 181(b), remain applicable to areas that are not attaining the 1-hour standard. Unless otherwise indicated, all references in this document are to the 1-hour ozone NAAQS.

The EPA received comment letters from 147 citizens supporting the reclassification action and/or requiring further improvements in air quality. One additional citizen commented that EPA should focus on sources of pollution other than motor vehicles such as aircraft, power plants and diesel engines. The Environmental Defense Fund commented in support of requiring further improvements in air quality. The Lone Star Chapter of the Sierra Club sent in a letter supporting EPA's proposal for reclassification of the DFW area to facilitate improvements in air quality. Two citizen commenters expressed some qualified concerns about the proposed action. The Greater Dallas Chamber requested EPA to reconsider the action in view of improvements in air quality, and the City of Plano requested a cost/benefit analysis and assessment on whether new control standards are achievable. The City of Dallas commented that programs should be required to be implemented across the entire nonattainment area, and that the nonattainment area should be expanded to the entire metropolitan statistical area (MSA) or consolidated metropolitan statistical area (CMSA). The City of Dallas also commented on flexible implementation times, on compliance with the Unfunded Mandates Reform Act, Regulatory Flexibility Act, and on Executive Order 12866. The Mayor of Fort Worth, the Honorable Kenneth Barr, expressed concern that counties adjacent to the metroplex are not being required to participate in the overall abatement program and urged EPA to expand the program to all areas contributing to the ozone problem. The City of Grand Prairie commented that the 1999 attainment date is virtually unattainable, that the nonattainment area should include the entire urbanized region, with control strategies applied fairly throughout the entire area, and the EPA ensure sufficient resources are available for technical assistance and public outreach. The Texas Natural Resource Conservation Commission (TNRCC) commented that it will continue to work in a results oriented way to improve air quality in the DFW area, but expressed procedural and legal concerns with the action. The EPA also received comments and questions from U.S. Representative Martin Frost and from Texas State Representative Lon Burnam regarding the timeframes associated with the reclassification SIP due date in view of the extension of the comment period. Specific comments along with EPA's responses are described below.

A. Comments on Air Quality Data

Comments: The Greater Dallas Chamber commented that while the area has not met the air quality standards specified by EPA, since 1990 emissions have been reduced 15 percent while population has increased 13 percent. The City of Plano also made the comment that significant progress has been made. The Environmental Defense Fund concurred with EPA's assessment of the air quality data that the area did not attain the ozone NAAQS by November 1996 and commented that little if any progress has been made since 1994.

Response: The EPA recognizes that over the very long term some improvements in the DFW air quality have been made and that programs have been put in place to improve air quality at a Federal, State, and local level. However, these programs have not been adequate to meet the health-based ozone standard or make the area eligible for an extension of the 1996 attainment date. Between 1994 and 1996, based on the number of exceedance days DFW had the eighth worst air quality in the nation (28 days). In the same time period based on air quality design value, DFW had the tenth worst air quality in the nation (0.139 ppm). In 1990, twenty-two areas had worse air quality than DFW based on air quality design value (DFW design value in 1990 was 0.140 ppm). Over a ten year period the area's design value has not shown a downward trend, and continues to remain at unacceptable levels above the health-based standards.

B. Comments Related to the Area of Coverage and Regional Approach to Controls

Comments: The EPA received 11 comments from citizens supporting the inclusion of surrounding counties to the DFW nonattainment area, particularly Ellis County. Several commenters expressed specific concerns about air pollutants coming from large stationary point sources in Ellis County. Some of the comments were specifically directed towards the burning of hazardous waste.

Response: The EPA agrees that sources of pollution outside the four county nonattainment area must be taken into consideration in air quality planning. We anticipate that the revised air quality attainment modeling demonstration will include large stationary sources of pollution from an area beyond the four county nonattainment area. The control strategy included in the revised SIP may require emission reductions from sources outside the nonattainment area if the State determines they would be effective

in achieving attainment for the DFW area. The EPA has not included additional counties in the nonattainment area at this time, since there has not been any air quality monitoring data showing exceedances of the ozone standard in these counties. Part of the additional monitoring requirements resulting from this action will be a monitor located south of the DFW nonattainment area. In addition, the EPA will be reevaluating the nonattainment area of coverage again when designations are made for the revised 8-hour ozone standard. Also, if the area does not meet its 1999 attainment deadline, EPA will consider expanding the nonattainment area to additional counties in the CMSA or the entire CMSA in a reclassification of the area to severe ozone nonattainment. Regarding the burning of hazardous waste, EPA's proposal for reclassification was strictly an action that applied to the ozone standard and not related to this issue.

Comments: The Greater Dallas Chamber stated that it is important to equally apply all standards and regulations among all four counties in the nonattainment area and that a truly Regional approach to improve air quality should be taken. The Greater Dallas Chamber also requested EPA reconsider the proposed reclassification and work with all parts of the nonattainment area to expand air quality control efforts. The City of Dallas and City of Grand Prairie similarly commented that emission control requirements should apply to all segments of the nonattainment area. The City of Dallas specifically pointed to the growth in Collin and Denton County, and the air quality exceedances in these counties as reasons to include these counties in the emission control programs especially those directed towards mobile sources such as the vehicle inspection and maintenance program. They pointed to the inequity of the situation in which the commuter to Dallas from the northern two counties may drive 25 miles each way and not be subject to enhanced testing, while the commuter to Dallas from Oak Cliff may drive only 5 miles each way and be subject to enhanced I/M testing. The City commented that EPA should not accept any implementation plan which omits enhanced I/M in Denton and Collin Counties. The Mayor of Fort Worth expressed concern that counties adjacent to the metroplex are not being required to participate in the overall abatement program. The City of Dallas felt the current imbalance in application

of control programs raised questions of environmental justice.

Response: The EPA concurs that strategies that apply equally across the nonattainment area are normally in the best interest in air quality improvement efforts. The EPA has listed expansion of the vehicle inspection and maintenance program to Collin and Denton counties as a cost effective measure which the State should consider in its revised SIP. However, EPA cannot require I/M programs to be placed in areas outside the 1990 urbanized area. The State is planning to implement remote sensing testing for vehicles commuting into Dallas and Tarrant counties. The EPA will be evaluating the program to determine whether sufficient numbers of failing vehicles are being repaired to make up urbanized area coverage shortages stemming from the State decision to implement its core I/M program in only Dallas and Tarrant counties. The EPA's action to finalize the DFW reclassification is based upon the area's monitored air quality and will help to focus efforts on needed air quality improvements. Therefore, EPA does not believe it is in the best interest of air quality to reconsider its proposed reclassification. Furthermore, section 181(b)(2) of the Act mandates that the Administrator redesignate an area that has not attained the standard by the applicable attainment date.

Comments: The City of Dallas commented that EPA is required by operation of law, 42 U.S.C. section 7407(d)(4)(iv), to designate the entire MSA or CMSA as nonattainment with the serious classification. The CMSA includes Collin, Dallas, Denton, Ellis, Henderson, Hunt, Kaufman, Rockwall, Hood, Johnson, Parker and Tarrant counties. The City of Dallas also cited 57 FR 13514-13515 (April 16, 1992) which stated that when a moderate area is bumped up to serious this section of the Act requires that the boundaries reflect the MSA/CMSA unless the State notifies EPA of its intent to study the appropriate boundaries. In addition, the City commented that for the policy reason of addressing all emissions in the area the entire CMSA should be included.

Response: The City has correctly read EPA's interpretation cited in the 1992 proposed General Preamble for Implementation of Title 1 of the Clean Air Act (57 FR 13514-13515). However, since 1992 EPA has interpreted and implemented section 107(d)(4)(A)(iv) of the Act in a more flexible manner regarding reclassifications. This section of the Act can also be interpreted only to be required to apply to areas when they are initially classified and not

necessarily when they are reclassified. This latter interpretation was applied in the Phoenix nonattainment area in its carbon monoxide reclassification (61 FR 39343-39347 (July 29, 1996)) and more recently in the moderate ozone area reclassification to serious (62 FR 60001-60013 (November 6, 1997)). However, if the DFW area does not meet its 1999 attainment deadline, EPA will consider expanding the nonattainment area to additional counties in the CMSA or the entire CMSA in a reclassification of the area to severe ozone nonattainment.

Comments: The EDF also commented that EPA should require Texas to consider the finding of the Ozone Transport Assessment Group (OTAG) and other studies which show ozone pollution is transported long distances and to consider the likely impact on the DFW nonattainment area from large point sources in Central and Northeast Texas.

Response: This comment is not relevant to the issues presented in this rulemaking. The EPA anticipates that the revised air quality modeling attainment demonstration will include emissions from large stationary sources of pollution long distances from the nonattainment area. The EPA agrees that looking at sources located at greater distances is an appropriate approach. This was the conclusion of the OTAG study. Although the OTAG results did not find that Texas was contributing to transport to the eastern United States, the results did conclude that transport is a factor in ozone formation.

C. Comments Related to the Timing of the Submission of the Revised SIP

Comments: U.S. Representative Martin Frost commented that he had been contacted by groups that the implementation plan stay on the original schedule in view of the 60-day extension of the comment period. Texas State Representative Lon Burnam also commented regarding the timeframes associated with the reclassification SIP due date in view of the extension of the comment period. Representative Burnam requested that the EPA stay on the original time frame for the final reclassification and SIP due date and was concerned about the impact of the 60-day time extension.

The EDF expressed concern that the proposed SIP submittal timing will pass before new actions to improve air quality are taken. One citizen also commented that a one-year SIP submittal window is too long, in view of the serious attainment deadline of November 1999, and requested EPA finalize a 6-month SIP submittal deadline. The citizen also requested that

EPA require the State to have some control measures in place at May 1, 1998, and a second tier of measures in place by May 1, 1999. The TNRCC commented that if DFW is reclassified, the TNRCC should be given a minimum of one year from the effective date prior to the final reclassification action. The City of Dallas commented that assuming EPA approval of the SIP, the nonattainment area will have approximately one year from the time of SIP approval to achieve attainment and that this time period will likely not be sufficient to put in place many requirements to achieve meaningful results. The City urged EPA to exercise all discretion to extend timetables so the region has a reasonable chance to achieve compliance.

Response: The EPA believes that a 12-month schedule for submittal of the revised plan is appropriate because of the time needed for the State to develop and submit the revised SIP. This 12-month timeframe is consistent with actions EPA has taken with the ozone reclassifications of Phoenix and Santa Barbara. The 12-month timeframe will begin upon the effective date of this action. Since the attainment date for serious areas, November 15, 1999, is less than 2 years away, the State will need to expedite adoption and implementation of controls to meet that deadline. The EPA believes the two-tiered approach for the revised air quality improvement plan has merit, but it will be up to the State to determine when to implement the additional controls with the desired result of meeting the 1999 attainment date. The EPA does not have discretion to extend the attainment date, under section 182(I) of the Act. However, the Act does allow for extensions of the attainment date under section 182(a)(5), if in the attainment year the area has sufficiently improved air quality and has met its SIP requirements.

D. Comments on Future Control Requirements

Comments: One citizen commented that EPA should make it clear that the TNRCC has the "powers" to go beyond the required measures to come up with an appropriate compliance plan for DFW. The citizen also commented that EPA list the possible control options it has developed in the final reclassification. Another citizen commented that EPA should focus on sources of pollution other than motor vehicles such as aircraft, power plants and diesel engines.

Response: The State has always had the ability to implement air quality improvement programs that exceed the

Federal requirements. The control options the EPA is recommending for consideration in the revised SIP include: 1) expansion of the I/M program into Collin and Denton or additional counties, 2) enhancements to the I/M program such as loaded mode testing, 3) cleaner gasolines such as Phase II of the reformulated gasoline program, 4) adoption of Reasonably Available Control Technology for offset lithographers, 5) additional transportation control measures, 6) an effective clean fuel fleet program, 7) nitrogen oxide (NO_x) controls on utility sources, and 8) opting into the California Low Emitting Vehicle program. The EPA agrees that all sources of pollution have to be considered for additional controls. However, in the DFW area on-road mobile sources comprise about 41 percent of the emissions inventory with off-road mobile sources comprising about 18 percent. Stationary point sources account for about 12 percent of the area's volatile organic compound air pollution.

Comments: The City of Grand Prairie commented that the attainment date of 1999 is virtually unattainable due to the lateness of EPA's action. The TNRCC also commented that it will be all but impossible for the DFW area to implement controls in time prior to the proposed new attainment deadline of November 15, 1999, and that another reclassification would be likely in the same timeframe as EPA's new ozone NAAQS. The TNRCC recommended that if the DFW area is reclassified, EPA allow a three-year assessment period beyond the new attainment date prior to any other action and that the TNRCC be given a minimum of one year from the effective date for submittal of the revised SIP.

Response: The EPA believes the State needs to take a proactive approach in implementing measures to improve air quality, but agrees it will be a challenge to achieve all the reductions needed by the summer of 1999. The State has the option of extending the 1-hour ozone attainment date out to 2005 if it requests a voluntary reclassification to a severe ozone nonattainment area. If such an approach was taken, requirements in the Act for a severe area would apply. Another reclassification will not occur if the area has improved air quality by November 1999 such that it is eligible for an extension based on the monitored data, under section 182(a)(5) of the Act. The EPA does not have the discretion in the Act to allow the three year assessment period contemplated by the TNRCC. If the area is not eligible for the extension, the Act would require

another reclassification six months after the November 15, 1999, attainment date. As stated earlier, the EPA is allowing the State up to one year from the effective date to submit its revised SIP.

E. Comments on Cost and Benefits

Comments: The City of Plano expressed concern about the costs related to the new standards and that the cost may surpass public health benefits. The City of Plano recommended that EPA perform a full cost-benefit analysis of its action to the DFW area, investigate whether new control standards are realistically achievable, and further test the health benefits of stricter air control standards for DFW before finalizing its proposed action.

Response: The EPA may not consider cost in the setting of air quality standards or reclassification of areas that fail to attain the standard. The decision whether or not to reclassify an area is solely based on air quality monitoring data compared with the national ambient air quality standard. The standards are required by the Act to be set at levels that protect public health without consideration of costs. However, we anticipate cost effectiveness will be considered by the State in the development of the revised SIP in the selection of what measures are best suited in achieving the standards.

Comments: The City of Grand Prairie commented that the EPA should ensure sufficient State resources are available since the State has failed in the past to provide sufficient or timely monitoring, modeling and technical assistance to the area due to a stated lack of funding. The City of Grand Prairie also requested a greater partnership with EPA in public outreach to persuade public opinion concerning participation in ozone reduction strategies since local entities do not have sufficient resources to undertake these efforts independently.

Response: The EPA can only require that the State meet the requirements of the serious areas which will include an attainment modeling demonstration, enhanced monitoring and control strategy to meet attainment. The financial and personnel resources needed to meet these requirements can only be determined by the State. Regarding partnership on public outreach, EPA agrees more can and should be done in communicating the need for improved air quality in the DFW area and the steps needed to achieve clean air. The EPA has been and is available for public outreach events and welcomes opportunities to participate. As part of this rulemaking

action, EPA designed and implemented a communication plan which is intended to develop support for efforts to improve air quality.

F. Comments Related to the Promulgation of the New Ozone NAAQS

Comments: The TNRCC commented that it is inappropriate to maintain the current 1-hour standard when the 8-hour standard is considered by EPA to be more protective to human health and that this continued imposition of the 1-hour standard is diametrically different than what was originally proposed by EPA. The TNRCC recommended that EPA move now to impose the 8-hour standard so that DFW and the TNRCC will no longer be required to dedicate resources to the 1-hour standard. The TNRCC questioned the legal authority of how the EPA can hold an area such as DFW for two separate standards for the same criteria pollutant. The TNRCC also commented that in the Presidential Directive, the President stated he wanted to ensure that the new standards be implemented in a common sense, cost effective manner; that they be implemented in the most flexible, reasonable, and least burdensome manner; and that the Federal government work with the State and local governments towards this end. The TNRCC requested that EPA address each of these concepts and explain how the DFW reclassification meets this directive.

Response: The continued applicability of the 1-hour standard is not the subject of this rulemaking. The 8-hour ozone standard is likewise not the subject of this action. This rulemaking only concerns the finding that the DFW area failed to attain the 1-hour standard by the attainment deadline and the consequences of that failure. The issue of the continued applicability of the 1-hour standard was part of the rulemaking in which EPA promulgated an 8-hour ozone standard (62 FR 38856 (July 18, 1997)). In that rulemaking, EPA made it clear that the Act did not preclude EPA from simultaneously implementing both standards. Also, historically EPA has had more than one primary standard for criteria pollutants (e.g., annual and 24-hour PM10 and sulfur dioxide standards, and 8-hour and 1-hour CO standards)(62 FR 38885). That rulemaking, not this one concerning DFW, was the appropriate forum in which to raise issues concerning the continued applicability of the 1-hour standard.

The EPA concurs that the Presidential Directive does direct EPA to ensure that the new standards be implemented in a

common sense, cost effective manner and they be implemented in the most flexible, reasonable, and least burdensome manner. The EPA believes it has been working with the State and local governments towards this end. The EPA has participated and will continue to participate in numerous briefings at the request of local governments to discuss the reason for and implementation of the reclassification. The EPA will work with the State in meetings and by giving guidance on and commenting on the revised SIP as it proceeds through the State process. The Presidential Directive also directs EPA to continue the implementation of the 1-hour requirements until the 1-hour standard is achieved. The EPA believes it is reasonable and makes sense to implement measures to improve air quality prior to the 8-hour ozone SIPs due in 2003. The EPA allows a good deal of flexibility in the measures that are chosen for the revised SIP since the State may choose the measures it thinks are the least burdensome and most cost effective.

G. Comments Related to Consistency of EPA's Action With Other Marginal and Moderate Areas

Comments: The TNRCC questioned what it described as EPA's inconsistency with areas similar to DFW noting that to date only three moderate areas have been proposed for reclassification to serious (DFW, Phoenix, and Santa Barbara). The TNRCC stated that it was encouraged by recent news that St. Louis was not going to be reclassified to serious nonattainment if the area made significant progress in reducing emissions, and the TNRCC was interested in discussing a similar approach with respect to DFW. The TNRCC specifically questioned why other marginal and moderate areas have not been acted on for not meeting their attainment deadlines.

Response: In contrast with DFW, most marginal and moderate areas have either attained their air quality standards and been redesignated to attainment, or have been eligible for an extension under section 182(a)(5) of the Act. The EPA is proceeding with implementing the 1-hour standard for areas not falling into these categories and which were required to meet the ozone standard at the end of 1996. Both the Phoenix and Santa Barbara reclassifications to serious have been finalized. The EPA is intending to propose reclassification of the Beaumont/Port Arthur area to serious nonattainment in the absence of a convincing demonstration that the area is subject to overwhelming

transport. The Manitowoc area was eligible for EPA's overwhelming transport policy, which recognizes that most of their air pollution is coming in from outside the area. In St. Louis, EPA is continuing to review the appropriate information, but the lack of final action with respect to St. Louis does not imply that EPA should determine that DFW should not be reclassified.

H. Comments Related to the Unfunded Mandates Reform Act, Regulatory Flexibility Act, and on Executive Order 12866

Comments: The City of Dallas commented that EPA is disregarding the requirements of the Unfunded Mandates Reform Act (UMRA), Executive Order 12866, and the Regulatory Flexibility Act in conducting the rulemaking. The City noted EPA's position that since the proposed reclassification is ordained by operation of law, no new requirements are placed on the parties which these laws and the Executive order seek to protect. The City argued that in reality new requirements, not currently in the SIP, will be imposed on the community.

Response: The EPA position regarding compliance of this action with the Regulatory Flexibility Act, Executive Order 12866, and the Unfunded Mandates Act is described in the Administrative Requirements section of this notice.

VI. Final Action

The EPA is finding that the DFW ozone nonattainment area did not attain the ozone NAAQS by November 15, 1996, the Act's attainment date for moderate ozone nonattainment areas. The submittal of the serious area SIP revision will be due no later than 12 months from the effective date of this action. The requirements for this SIP submittal are established in section 182 of the Act and applicable EPA guidance.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future action. Each finding of failure to attain, request for an extension of an attainment date, and establishment of a SIP submittal date shall be considered separately and shall be based on the factual situation of the area under consideration and in relation to relevant statutory and regulatory requirements.

VI. 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 action 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 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.

The EPA has determined that neither the finding of failure to attain the ozone standard, nor the establishment of a SIP submittal schedule would result in any of the effects identified in E.O. 12866 section 3(f). As discussed in the response to comments above, findings of failure to attain under section 181(b)(2) of the Act 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. section 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. sections 603 and 604. 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.

A finding of failure to attain (and the consequent reclassification of the nonattainment area by operation of law under section 181(b)(2) of the Act) and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, 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 rulemaking simply makes a factual determination and establishes a schedule to require the State to submit SIP revisions, and does not directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA reaffirms its certification made in the proposal (62 FR 46233 (September 2, 1997)) that today's final action will not have a significant impact on a substantial number of small entities within the meaning of those terms for Regulatory Flexibility Act purposes.

C. Unfunded Mandates Reform Act

Title II of the UMRA, (Pub. L. 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, when EPA promulgates "any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more" in any one year. A "Federal mandate" is defined, under section 101 of UMRA, as a provision that "would impose an enforceable duty" upon the private sector or State, local, or Tribal governments," with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA "establish[es] any regulatory requirements that might significantly or uniquely affect small governments." Under section 204 of UMRA, EPA is

required to develop a process to facilitate input by elected officers of State, local, and Tribal governments for EPA's "regulatory proposals" that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates "any rule for which a written statement is required under" (UMRA section 202), EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Generally, EPA has determined that the provisions of sections 202 and 205 of UMRA do not apply to this decision. Under section 202, EPA is to prepare a written statement that is to contain assessments and estimates of the costs and benefits of a rule containing a Federal Mandate "unless otherwise prohibited by law." Congress clarified that "unless otherwise prohibited by law" referred to whether an agency was prohibited from considering the information in the rulemaking process, not to whether an agency was prohibited from collecting the information. The Conference Report on UMRA states, "This section [202] does not require the preparation of any estimate or analysis if the agency is prohibited by law from considering the estimate or analysis in adopting the rule." See 141 Cong. Rec. H3063 (Daily ed. March 13, 1995). Because the Clean Air Act prohibits the Agency from considering the types of estimates and assessments described in section 202 when determining whether an area attained the ozone standard or met the criteria for an extension, UMRA does not require EPA to prepare a written statement under section 202. Although the establishment of a SIP submission schedule may impose a federal mandate, this mandate would not create costs of \$100 million or more, and therefore, no analysis is required under section 202. The requirements in section 205 do not apply because those requirements are for rules "for which a written statement is required under section 202.* * *"

Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements finalized today—the SIP submittal schedule—

affect only the State of Texas, which is not a small government under UMRA.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 20, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

Dated: February 4, 1998.

Lynda F. Carroll,
Acting Regional Administrator.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In §81.344 the table for Texas—Ozone is amended by revising the entry for the Dallas-Fort Worth area to read as follows:

§ 81.344 Texas.

* * * * *

TEXAS—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type

TEXAS—OZONE—Continued

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Dallas-Fort Worth Area:				
Collin County		Nonattainment	3/20/98	Serious
Dallas County		Nonattainment	3/20/98	Serious
Denton County		Nonattainment	3/20/98	Serious
Tarrant County		Nonattainment	3/20/98	Serious

¹ This date is November 15, 1990, unless otherwise noted.

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 [FR Doc. 98-4005 Filed 2-17-98; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300609; FRL-5767-8]

RIN 2070-AB78

Dimethomorph; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerances for residues of dimethomorph in or on squash, cantaloupe, watermelon, and cucumber. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), authorizing use of the pesticide on squash, cantaloupe, watermelon, and cucumber. This regulation establishes a maximum permissible level for residues of dimethomorph in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. These tolerances will expire and are revoked on March 31, 2000.

DATES: This regulation is effective February 18, 1998. Objections and requests for hearings must be received by EPA on or before April 20, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP-300609], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance

Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300609], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP-300609]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308-9364, e-mail: pemberton.libby@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21

U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the fungicide dimethomorph, in or on squash, cantaloupe, watermelon, and cucumber at 1.0 part per million (ppm). These tolerances will expire and are revoked on March 31, 2000. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Authority

The Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104-170) was signed into law August 3, 1996. FQPA amends both the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described below and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (November 13, 1996; 61 FR 58135) (FRL-5572-9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and