

## 8-Hour Ozone NAAQS - US EPA Guidance on Non-Attainment Designation

Attachment

### 8-HOUR OZONE NAAQS GUIDANCE ON NONATTAINMENT DESIGNATIONS

#### 1. Why is EPA issuing this guidance on 8-hour ozone NAAQS nonattainment designations?

States have requested that EPA provide guidance on the appropriate boundaries for areas that will be designated nonattainment for the 8-hour standard. The EPA provided initial guidance on designations in a June 1999 memorandum.<sup>1</sup> That memorandum noted that EPA would provide additional information on designations at a future date. This guidance on how to determine the appropriate boundaries for areas that will be designated nonattainment for the current 8-hour ozone NAAQS is intended to meet that commitment. In addition, in light of the court decision remanding the 8-hour standard to EPA, States have asked what the implications are if EPA issues a revised ozone standard in response to the court's remand.

On July 18, 1997, EPA issued the revised NAAQS for ozone (62 FR 38856). The new standard is 0.08 parts per million (ppm) averaged over 8-hours; this compares to the pre-existing NAAQS of 0.12 ppm averaged over 1 hour. This action triggered the requirement under §107 of the Act and §6103 of TEA-21 for EPA to designate areas as attainment/unclassifiable or nonattainment for the revised NAAQS. Under these statutory provisions, EPA is required to designate areas for the revised standard by July 2000.

On May 14, 1999, the U.S. Court of Appeals for the District of Columbia Circuit issued a decision remanding, but not vacating, the 8-hour ozone standard. The court noted that EPA is required to designate areas for any new or revised NAAQS in accordance with §107(d)(1) of the Act. American Trucking Assoc. v. EPA, 175 F.3d 1027, 1047-48, on rehearing 195 F.3d 4 (D.C. Cir. 1999).

As provided in this guidance, EPA is planning to designate areas for the 8-hour ozone NAAQS promulgated in July 1997. If EPA promulgates a revised ozone NAAQS in response to a final unappealable court decision regarding the validity of the 8-hour standard, EPA would then be required to begin the designation process under §107 of the CAA for that revised ozone NAAQS. In such a case, EPA would issue guidance regarding designations for that revised NAAQS. At the time of promulgation of that revised NAAQS, EPA would establish, after an opportunity for public review, an appropriate transition scheme from the current 8-hour NAAQS to any revised NAAQS promulgated in response to the court's decision. Although this memorandum is not establishing the transition scheme, EPA does not anticipate requiring States or Tribes to comply with the statutory redesignation requirements to modify the designations for the replaced NAAQS.

#### 2. What are the underlying requirements for designating areas for the 8-hour ozone NAAQS?

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<sup>1</sup>Memorandum of June 25, 1999, from John S. Seitz, "Designations for the 8-Hour Ozone National Ambient Air Quality Standard."

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There are two relevant statutory provisions governing designations for the 8-hour ozone NAAQS. Section 107(d)(1) of the Act establishes the requirements for making designations for areas when a NAAQS is promulgated or revised. These are designations of nonattainment or attainment/unclassifiable. The provision provides an opportunity for each State to make a recommendation to EPA concerning the designation of areas in the State within 1 year after promulgation of a new or revised NAAQS. The EPA is required to designate areas across the country no later than 2 years following the promulgation of the NAAQS. The TEA-21 §6103 essentially extends by 1 year the 2-year designation process. Thus, States were provided 2 years to make their recommendations and EPA is required to designate areas 1 year after the State designation recommendations are due.

As authorized by the Tribal Authority Rule (TAR), Tribes may request an opportunity to submit designation recommendations to EPA. In cases where Tribes do not make their own recommendations, then EPA, in consultation with the Tribes, will promulgate the designation it deems appropriate on their behalf.<sup>2</sup>

In issuing the final designations, EPA is authorized to make such modifications it deems necessary to the recommended designations of the areas or portions thereof including the

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<sup>2</sup>The CAA, §301(d), authorizes EPA to treat eligible Indian Tribes in the same manner as States. Pursuant to §301(d)(2), EPA promulgated regulations known as the “Tribal Authority Rule” on February 12, 1999 that specifies those provisions of the Act for which it is appropriate to treat Tribes as States. 63 FR 7254, codified at 40 Code of Federal Regulations (CFR) §49 (1999). Under the TAR, Tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which Tribes may request from EPA a determination of eligibility for such treatment. The designations process contained in §107(d)(1) of the Act is included among those provisions determined appropriate by EPA for treatment of Tribes in the same manner as States. Therefore, EPA Regional Offices will work with the Tribes in their Regions that request an opportunity to submit designation recommendations. Eligible Tribes may choose to submit their own recommendations and supporting documentation. Since, currently, there is a lack of air quality monitoring data nationally throughout Indian country, the factors identified in this guidance should be considered in recommending designations for the 8-hour ozone standard. The EPA will review the recommendations made by Tribes and may, in consultation with the Tribes, make modifications as deemed necessary. Under the TAR, Tribes generally are not subject to the same submission schedules imposed by the CAA on States. Therefore, EPA Regional Offices will work with their Tribes in scheduling interim activities and final designation actions, insofar as practicable, within the time frames outlined in this memorandum.

Finally, certain aspects of this guidance may not be particularly suited for application to Tribes due to circumstances that presently exist throughout Indian country. Consequently, EPA intends to issue additional guidance in the near future to further address designation issues pertaining to Tribes.

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boundaries of the areas or portions thereof. If EPA modifies a designation or boundary, it must notify the State or Tribe at least 120 days in advance of such action in order to give the State or Tribe an opportunity to demonstrate why the proposed modification is inappropriate. The EPA's designation of areas for the 8-hour ozone NAAQS will be based on the most recent 3 consecutive years of air quality data from Federal reference or equivalent method monitors.<sup>3</sup>

Tribes are not required to recommend designations; however, they may choose to make recommended designations for land under their jurisdiction. The EPA will review the Tribe's recommendation, and may, in consultation with the Tribe, make modifications to the Tribe's recommendation. In cases where Tribes do not make their own recommendations, then EPA, upon consultation with the respective Tribe(s), will make designations for them.

### 3. How should boundaries of nonattainment areas be drawn and what process must be followed?

Section 107(d)(1) of the CAA addresses the determination of whether an area is to be designated nonattainment. With respect to a specific NAAQS, such as the 8-hour ozone NAAQS, this provision requires all areas to be designated nonattainment if they do not meet the standard or contribute to ambient air quality in a nearby area that does not meet the standard.

The EPA believes that any county with an ozone monitor showing a violation of the NAAQS and any nearby contributing area needs to be designated as nonattainment. In reducing ozone concentrations above the NAAQS, EPA believes it is best to consider controls on sources over a larger area due to the pervasive nature of ground level ozone and transport of ozone and its precursors. Thus, EPA recommends that the Metropolitan Statistical Area or the Consolidated Metropolitan Statistical Area (C/MSA) serve as the presumptive boundary for 8-hour NAAQS nonattainment areas.<sup>4</sup> We believe this approach will best ensure public health protection from the adverse effects of ozone pollution caused by population density, traffic and commuting patterns, commercial development, and area growth. In the past, areas within C/MSAs have generally experienced higher levels of ozone concentrations and ozone precursor emissions than areas not in C/MSAs. In addition, the 1990 Amendments to the CAA established the C/MSA as the presumptive boundary for ozone nonattainment areas classified as serious, severe and extreme.

### 4. How should designation recommendations, including boundaries, be addressed when more than one State and/or Tribe might be affected?

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<sup>3</sup>For the 8-hour ozone NAAQS, it is 3 consecutive years of data in accordance with 40 CFR part 50, Appendix I; data used will be quality-assured and meet 40 CFR part 58 requirements (e.g., for monitor siting). Designations should generally be made based on 1997-1999 air quality, considering data availability.

<sup>4</sup>C/MSAs are identified by the U.S. Bureau of the Census and can be found at the following website: <http://www.census.gov/population/www/estimates/aboutmetro.html>.

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Where more than one State is involved with respect to an area, close coordination is needed among the affected States and Tribes prior to the time the recommendation is made. In addition, the EPA Regional Office should coordinate where an area may be located in States or tribal lands located in two or more regions. There is a strong presumption that interstate areas making up one C/MSA will be designated as one nonattainment area. The EPA believes that it is important that consistent and coordinated boundary recommendations be made for the area from each State and Tribe.

5. What factors should a State or Tribe consider in determining whether to recommend area boundaries that are larger or smaller than a C/MSA or tribal land?

In some cases, the most appropriate nonattainment area boundary may be larger than the C/MSA. For example, if sources located in a county or on Indian lands outside the C/MSA contribute to violations within the C/MSA, States or Tribes should consider whether it would be appropriate to expand the nonattainment area to include the area in which those sources are located. In other cases, a smaller nonattainment area may be more appropriate. For example, one C/MSA may cover multiple air basins, or include counties or portions of counties which are rural in nature.

A State or Tribe wishing to propose larger or smaller nonattainment area boundaries (including partial counties or portions of areas on tribal lands) than those matching the C/MSA or boundary of the tribal land should address how each of the following factors affect the drawing of nonattainment area boundaries and how the resulting recommendation is consistent with the definition of nonattainment in §107(d)(1) of the Act. Additional information is provided below under question number 12 on documentation.

- Emissions and air quality in adjacent areas (including adjacent C/MSAs)
- Population density and degree of urbanization including commercial development (significant difference from surrounding areas)
- Monitoring data representing ozone concentrations in local areas and larger areas (urban or regional scale)
- Location of emission sources (emission sources and nearby receptors should generally be included in the same nonattainment area)
- Traffic and commuting patterns
- Expected growth (including extent, pattern and rate of growth)
- Meteorology (weather/transport patterns)
- Geography/topography (mountain ranges or other air basin boundaries)
- Jurisdictional boundaries (e.g., counties, air districts, existing 1-hour nonattainment areas, Reservations, etc.)
- Level of control of emission sources
- Regional emission reductions (e.g., NO<sub>x</sub> SIP call or other enforceable regional strategies)

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A State or Tribe choosing to propose area boundaries smaller than a C/MSA or tribal land should consult with its EPA Regional Office. The EPA will consider alternative boundary recommendations on a case-by-case basis to assess whether the recommendation is consistent with §107(d)(1) of the Act.

The EPA will issue guidance on factors for Tribes to consider when submitting designation recommendations. Some of the factors, particularly for areas throughout Indian country that may not have adequate or any air quality ozone monitors, are geographic location of the land, proximity to the nearest C/MSA, prevailing meteorology, location of nearby ozone monitors, available ozone air quality data, and location of nearby emission sources both inside and outside of such areas.

6. What are the key timing activities for and implications of designation as nonattainment under the 8-hour ozone standard particularly for States?

The designation process has several steps. On June 25, 1999, EPA issued a guidance memorandum requesting that States submit the most recent, complete, quality-assured ozone monitoring data identifying the monitors where exceedances of the 8-hour standard have occurred. The EPA, with this memorandum, is providing guidance describing the criteria for drawing boundaries for nonattainment areas and setting deadlines for the steps in the designation process. States will then have several months to work with local governments and other stakeholders and submit their recommendations and supporting documentation to EPA for area designations and boundaries by June 30, 2000. The EPA will then review and respond to the State designations including boundaries by late summer. The EPA will not make final designations prior to late December because it cannot make them until at least 4 months (120 days) after responding to the States, pursuant to a CAA requirement. Given this process, designations could not become effective prior to early 2001 at the earliest, nor would conformity or other requirements. Conformity and other planning requirements would be triggered on the effective date of designations. The EPA Regional Offices should immediately begin to work with their States and Tribes on boundary recommendations to ensure that they have maximum input prior to the June 30, 2000 recommendation date and encourage States to coordinate with appropriate transportation planning agencies.

After EPA makes the final designations, it will publish them in the Federal Register and set a date on which they become effective. Historically, the effective date of a rule is usually 30 to 60 days after publication, but can be later. In the process of determining when to finalize the proposed designations and make them effective, EPA will carefully consider the time needed to prepare for any applicable requirements, as well as the status of ongoing litigation and administrative proceedings. The EPA is committed to ensuring that all State and local officials have ample time to comply with requirements that are applicable when designations become effective.

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The EPA believes that the Court decision affirms the serious health risk posed by ozone. Thus, notwithstanding the schedule described above, EPA believes that it is important to issue a final action on designations to provide the public with information regarding the air quality in areas in which they live and work. In addition, areas can continue to take certain actions with respect to the 8-hour standard, such as operating monitoring sites, analyzing monitoring data, implementing public education and communications efforts regarding health impacts and potential solutions, collecting emissions inventory data, examining potential control measures such as major source Reasonably Available Control Technology and other Reasonably Available Control Measures, considering voluntary emission reduction measures and considering the integration of strategies for the attainment and maintenance of all NAAQS.

### 7. How should long-range transport be addressed in the boundary recommendation?

In addition to nearby areas with sources contributing to nonattainment, ozone concentrations are affected by long-range transport of ozone and its precursors (notably NO<sub>x</sub>). Thus, in certain parts of the country, such as the eastern U.S., ozone is a widespread problem. Where this is the case, the Act does not require that all contributing areas be designated nonattainment, only the nearby areas. Regional strategies, such as those employed in the Ozone Transport Region in the Northeast U.S., and in the EPA NO<sub>x</sub> SIP call, are needed to address the long-range transport component of ozone nonattainment, while the local component must be addressed through more local planning in and around the designated nonattainment area. Tribal areas may also be affected by transport.<sup>5</sup>

### 8. How should designation recommendations be handled for 8-hour ozone nonattainment areas that cover some of the same area as 1-hour ozone nonattainment areas?

In areas where the 1-hour NAAQS still applies, EPA's presumption is that the designated 8-hour nonattainment area boundary will be the C/MSA or the 1-hour nonattainment area boundary, whichever is larger.

### 9. What will happen if EPA does not receive a designation recommendation from a State or Tribe?

In the absence of a Governor's recommendation by June 30, 2000, EPA will determine the designation. The EPA plans to follow this guidance in designating areas. In cases where Tribes do not make their own recommendations, then EPA, upon consultation with the respective Tribe(s), will promulgate the designation it deems appropriate.

### 10. Must States recommend a classification for, or will EPA classify, nonattainment areas under the 8-hour ozone NAAQS?

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<sup>5</sup>The prohibitions and authority contained in sections 110(a)(2)(D)(i) and 126 of the Act apply to Tribes in the same manner as States.

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The EPA will not classify nonattainment areas at this time; thus, States and Tribes should not submit recommendations for classifications. If EPA determines to classify areas in the future, it will provide an opportunity for State and Tribal involvement.

### 11. What technical information should a State consider in its designation recommendations?

To assist States and Tribes with their recommendations, the EPA is providing technical reports and maps showing locations where air quality was violating the 8-hour NAAQS based on 1997-1999 monitored data that States and Tribes may find useful in defining the boundaries of nonattainment areas. The information will be posted on EPA's web site in the immediate future.

### 12. What documentation should a State or Tribal government submit concerning the nonattainment area recommendations?

In addition to technical information documenting the recommendation for area boundaries noted in question number 5 above, the EPA is requesting that each State or Tribe in its submission provide certain air quality data and geographic information to support its nonattainment area recommendation. The EPA is asking for the following information:

For nonattainment areas:

- a. Design value<sup>6</sup> for the area.
- b. Period of time represented by the design value, e.g., 1997-1999.
- c. Design value monitoring site location and identification number.

For attainment/unclassifiable and nonattainment areas:

- d. Names of counties and tribal lands included, and
- e. If partial counties or portions of tribal lands are included, the boundary definition/description as outlined below.

If the recommended nonattainment area boundary is less than a C/MSA, the State or Tribe should document its rationale for selecting the nonattainment area boundary. The documentation should address how the items in question number 5 affect the drawing of boundaries for each county or Reservation not included in the recommended nonattainment area such as population, traffic and commuting patterns, commercial development, projected growth, prevailing meteorology, nearby sources and air quality, and any other relevant or technical justification factors. In particular, where the recommended area boundary consists of parts of counties, C/MSAs, or Reservations, the State or Tribe must provide a technical analysis for its recommendation, explaining how the boundary is consistent with §107 (d)(1) of the Act.

If there is less than a full county or Reservation, the EPA is requesting a legal definition of the area, a detailed hard copy map, and, because EPA plans to map the definition, a digitized

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<sup>6</sup>The ozone air quality design value for a site is defined as the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration.

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latitude and longitude description for mapping purposes if available. Regional Offices and States should include the names of contacts from their respective offices for this information. The EPA requests that each State and Tribe submit its attainment/unclassifiable and nonattainment area designation recommendation and boundary information to EPA in both a detailed written form and in electronic form in a format consistent with how designations are identified in Part 81 of the CFR. In addition to the formal letter making the recommendation, EPA requests the States provide an electronic record in a usable file which will be merged with all other States' and Tribes' recommendations for a final complete product. An example is shown below.



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### Format of Recommendations for Designations

State Name

Nonattainment Areas:

Area Name

County or Tribal Land Names

Area Name

County or Tribal Land Names

Attainment/Unclassifiable Areas:

Rest of State or County or Tribal Land Names

This is how it would appear in the Code of Federal Regulations:

**81.xxx [STATE NAME].**

\*       \*       \*       \*       \*

[STATE NAME]-OZONE (8-HOUR STANDARD)

Designated Area	Designation	Classification
	Type	Type
[NAME] Area: [NAME] County.....	Nonattainment Nonattainment	LEAVE BLANK
[NAME] Area: [NAME] County.....		
[NAME] County.....		
[NAME] County.....		
[NAME] County.....		
[Name] Tribal Land [Name] County.....	Attainment/ Unclassifiable Attainment/ Unclassifiable	
Rest of State.....		
Rest of Tribal Land.....		

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### 13. When should the recommendations be submitted?

The Governor should submit all recommendations and supporting documentation for designations for nonattainment and attainment/unclassifiable areas, boundaries, and boundary descriptions described above to the EPA Regional Office by June 30, 2000. The eligible Tribal governing body, with the assistance of the appropriate EPA Regional Office, should submit all recommendations and supporting documentation consistent with the statements in question

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number 2 of this memorandum. The EPA will notify the State or Tribe no later than 120 days prior to the designation action where EPA plans to modify a recommendation.

14. Is there any special process for attainment/unclassifiable areas?

The EPA will not distinguish between attainment and unclassifiable areas. The State or Tribe should indicate if its preference is that EPA list each attainment/unclassifiable area individually (e.g., by county); otherwise, EPA will indicate that the “rest of State” or “rest of tribal land” is attainment/unclassifiable.