

classified under subpart 1, we have determined the classification scheme it proposed earlier is not appropriate. We are now proposing, as described below, two new options for classifying subpart 1 areas for the 8-hour standard.

b. *Options for classifying subpart 1 areas* (i) *Option 1—no classifications.* Under this option, subpart 1 areas would not have different classifications. When submitting an attainment demonstration, each area would need to establish an attainment date consistent with section 172(a)(2)(A), *i.e.*, demonstrating attainment as expeditiously as practicable, but no later than 5 years after designation or 10 years after designation if the severity of the area's air pollution and the availability and feasibility of pollution control measures indicate more time is needed.

(ii) *Option 2—create an overwhelming interstate transport classification.* This option could be implemented in addition to option 1 (no classifications) for areas that qualify; in other words, we would not classify areas that do not qualify for this transport classification. Under this option, an area could be classified as a "Transport Area" upon submission of a SIP that demonstrates, using modeling, that the nonattainment problem in the area is due to "overwhelming transport" emissions.

We are proposing that for subpart 1 areas to qualify for an overwhelming transport classification, the area would have to meet the same criteria as specified for rural transport areas under section 182(h) (of subpart 2). This section restricts treatment as a rural transport area to an area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census). The area may be treated as a rural transport area if we find that sources of VOC (and, where we determine relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.¹⁵ Since this classification would only apply to subpart 1 areas, areas classified under subpart 2 would not qualify for this classification.

¹⁵ EPA's guidance on such determinations appears in "Criteria for Assessing the Role of Transport of Ozone/Precursors in Ozone Nonattainment Areas," May 1991. U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Technical Support Division, Research Triangle Park, NC 27711. Available at: <http://www.epa.gov/scram001/tt25.htm>. Look for zip file name UAMIVGUIDE. Unzip to access file name UAMCRIT.

The following are features of this option:

- The area would be treated similar to areas classified marginal under subpart 2 for purposes of emission control requirements.
- Less restrictive NSR and conformity requirements could be proposed for the area. If we include the transport classification option in the final implementation rule, we would consider proposing a separate rulemaking on the details of NSR and conformity requirements.
- The area would receive an attainment date that is consistent with section 172(a)(2)(A), but that takes into consideration the following:
 - The attainment date of upwind nonattainment areas that contribute to the downwind area's problem; and
 - The implementation schedule for upwind area controls, regardless of their geographic scope (*e.g.*, national, regional, statewide, local).

This option would partially address Tribal concerns about designations where a Tribal area designated nonattainment does not contribute significantly to its own problem. This is one of the key issues for the Tribes who seek to have economic growth from new sources within their jurisdiction but that have difficulty obtaining emission reduction offsets from sources located either inside or outside Tribal areas.

Interstate, intrastate, and international transport are also discussed elsewhere in this proposed rulemaking.

5. Rationale for Regulating All "Gap" Areas Under Subpart 1 Only

This section is aimed solely at providing a rationale for why all gap areas should be placed under the subpart 1 regulatory framework rather than the subpart 2 regulatory framework. Issues regarding what specific requirements should apply to subpart 1 areas are addressed in later sections of this preamble.

In developing classification option 2, we explored a number of options regarding how to interpret the relationship of subpart 1 and subpart 2 for areas with 1-hour design values less than 0.121. These areas are referred to below as "gap" areas because their 1-hour design value falls below the lowest value in the subpart 2 classification table and thus Congress did not dictate whether subpart 2 or subpart 1 applies. The options we explored ranged from placing all of these areas into the subpart 2 classification scheme to placing none of these areas into the subpart 2 classification scheme. We are proposing the latter approach—that all areas that fall into the gap should be

subject only to the planning obligations of subpart 1. When faced with a similar issue following enactment of the CAA Amendments of 1990, we determined that areas that Congress did not mandate fall into the classification scheme of subpart 2 should be subject to only the planning obligations of subpart 1.¹⁶

For classification option 2, we believe it is appropriate to continue that interpretation of the CAA for 8-hour ozone areas, despite the fact that a significant number of areas designated nonattainment for the 8-hour NAAQS will fall into this group. Congress enacted subpart 2 with the understanding that all areas (except marginal areas, for which no new controls were required) would have to employ additional local controls to meet the 1-hour ozone standard in a timely fashion. Since then, many control measures have been implemented, our understanding of the importance of interstate pollution transport has improved, and we have promulgated interstate NO_x transport rules. Regional modeling by EPA indicates that the majority of potential 8-hour nonattainment areas that fall into the gap will attain the 8-hour standard by 2007 based on reductions from the NO_x SIP Call, the Federal Motor Vehicle Emissions Control Program, and other existing Federal and State control measures, without further local controls.

Of the 76 hypothetical areas that would fall into the gap (and would thus be covered under subpart 1 under classification option 2), 27 would have been classified as moderate if classified under option 1 based on their 8-hour design values. Eighteen of these 27 areas are projected to attain by 2007 through existing regional or national measures. If these areas were to be classified as moderate (under classification option 1), these areas would nonetheless be required to implement statutorily specified controls for moderate areas. Using our discretion to regulate gap areas under subpart 1 is one way (the proposed incentive feature, discussed below in this section on classifications, is another way) to avoid requiring unnecessary new local controls in areas

¹⁶ These areas included: (a) The transitional areas under section 185A (areas that were designated as an ozone nonattainment area as of the date of enactment of the CAA Amendments of 1990 but that did not violate the 1-hour ozone NAAQS between January 1, 1987, and December 31, 1989); (b) nonattainment areas that had incomplete (or no) recent attaining data and therefore could not be designated attainment; and (c) areas that were violating the 1-hour ozone standard by virtue of their expected number of exceedances, but whose design values were lower than the threshold for which an area can be classified under Table 1 of subpart 2 (submarginal areas). See 57 FR 13498 at 13524 col. 3 *et seq.* (April 16, 1992).