

criticism from a wide variety of commenters, who argued that modeling could be applied inappropriately in classifying areas. We nonetheless believe it is appropriate to propose this feature to alleviate some of the other concerns that many commenters raised about the mandatory measures required under the higher classifications of subpart 2. Furthermore, we believe this option is justified by the intent of the CAA, in which an area's classification is generally linked to the amount of time the area is anticipated to need to attain the NAAQS. We recognize that the CAA was not originally structured to allow lower classifications based on an area being projected to attain earlier. However, under the Supreme Court ruling that required that we interpret the law regarding subpart 2's application to the 8-hour ozone standard, we believe it may reasonably give areas that are projected to attain the 8-hour ozone

standard by an earlier date a classification that is consistent with that attainment date.

#### 7. Other Options EPA Considered

We considered many other options for classification and for the translation of the classification table in the CAA. These options are discussed in a separate document available in the docket.<sup>17</sup> These other possible ways of translating the classification table, in our opinion, do not have the same degree of consonance with the intent of Congress when it enacted subpart 2 as those we are proposing. We are therefore not proposing them.

#### 8. Implications for the Options

To evaluate the potential impact of the various classification options, we developed a set of 122 hypothetical nonattainment areas based on the counties that have monitors measuring

violations of the 8-hour ozone standard for the 3-year period of 1998–2000. Our inclusion and grouping of counties into hypothetical nonattainment areas was done only for illustrative purposes and does not have any implications for the location, number or boundaries of nonattainment areas that may ultimately be evaluated and recommended by States and Tribes or designated by EPA. The final designations would be affected by factors contained in EPA's guidance on boundaries of nonattainment areas (which is, as noted earlier, not a topic of discussion or comment for this notice of proposed rulemaking). As noted earlier, Table 3 illustrates a possible classification grouping of nonattainment areas based on counties with monitors based on the options proposed above. The list of these areas and the information we used in assessing the consequences of our proposal are available in the docket.<sup>18</sup>

TABLE 3.—PROPOSED CLASSIFICATION OPTIONS COUNTS OF HYPOTHETICAL NONATTAINMENT AREAS

	Subpart 2						Subpart 1	
	Extreme	Severe-17	Severe-15	Serious	Moderate	Marginal		Total
Option 1 (8-hour design value) .....	0	1	1	6	53	61	0	122
Option 1 (8-hour design value)—with incentive feature* .....	0	1	1	6	30	84	0	122
Option 2 (2-step approach—areas < 0.121 ppm = subpart 1) .....	0	1	1	6	26	12	76	122
Option 2 (2-step approach—areas < 0.121 ppm = subpart 1)—with incentive feature <sup>1</sup> ...	0	1	1	6	21	17	76	122

<sup>1</sup> Areas that would be moderate using their 8-hour design value but that are projected to attain by 2007 would be classified marginal.

#### 9. Other Considerations

In addition to the overall classification options being proposed, it should be noted that subpart 2 also provides that classifications may be adjusted upward or downward for an area if the area's design value is within 5 percent of another classification. This provision (section 181(a)(4)) reads:

If an area classified under [Table 1] would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, \* \* \* adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of

pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

Thus, for example, if a downwind area is subjected to a subpart 2 classification and there is evidence that the area will not benefit significantly from local controls mandated by subpart 2 for the area's classification and can attain within the time period specified for the next lower classification, the area may obtain some relief based on the 5 percent rule in the CAA, if applicable.

This provision does not establish a mechanism for removing areas from the subpart 2 classification scheme.

#### *B. How Will EPA Treat Attainment Dates and Other Dates Including SIP Submittal Dates for the 8-Hour Ozone Standard?*

##### 1. Background

Under subpart 2 of the CAA, maximum attainment dates and most SIP submittal dates are fixed as a function of a nonattainment area's classification under Table 1. The CAA provides that an area's attainment date must be “as expeditious as practicable but no later than” the date prescribed in Table 1 for that area's classification. The statutory dates are specified as a number of years (e.g., 6 years) from the date of enactment of the CAA Amendments, which was November 15, 1990. Because these dates are a set number of years after enactment of the CAA Amendments, one might initially

<sup>17</sup> Additional Options Considered for “Proposed Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard.” U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC. March 2003.

<sup>18</sup> Background Information Document, Hypothetical Nonattainment Areas for Purposes of Understanding the EPA Proposed Rule for Implementing the 8-hour Ozone National Ambient Air Quality Standard. Illustrative Analysis Based on 1998–2000 Data. U.S. Environmental Protection

Agency, Office of Air and Radiation, Office of Air Quality Planning and Standards, Draft, April 2003. Available at: <http://www.epa.gov/ttn/naaqs/ozone/o3imp8hr/>.