

numerous organizations for review and comment. A copy of the revised Protocol is available in the docket for this proposed rulemaking.

3. What is EPA's Response to the Texas "Early Action Compact?"

In a letter dated June 19, 2002, from Gregg Cooke, Administrator, Region 6, to Robert Huston, Chairman, TCEQ, EPA endorsed the principles outlined in the Protocol. The Protocol was subsequently revised on December 11, 2002, based on comments from EPA. Upon the completion of Compacts by December 31, 2002 in areas that meet the requirements of the Protocol (including 1-hour maintenance areas), we intend to honor the commitments established in these agreements. Any control measures identified by a Compact area must be submitted to EPA for approval as a SIP revision.

In a proposed settlement with nine environmental groups, we agreed to designate areas for the 8-hour ozone standard by April 15, 2004. This deadline gives States and Tribes ample time to update their recommendations by April 15, 2003 for nonattainment area boundaries. EPA lodged the proposed consent decree on November 13, 2002 with the U.S. District Court for the District of Columbia. Also on November 14, 2002, we issued a guidance memorandum outlining the new designations schedule, requirements for designating Tribal areas, and discussing the impact of the designation schedule on areas that are developing early action compacts. (Memorandum dated November 14, 2002, from Jeffrey R. Holmstead, Assistant Administrator, to EPA Regional Administrators.)

We have entered into early action compacts with a number of areas of the country. As a result, we will designate all areas of the country either attainment or nonattainment in April 2004 (including Compact areas). At that time, we plan to propose to defer the effective date of the nonattainment designation for participating Compact areas that are monitoring a violation of the 8-hour ozone standard, provided all terms of the agreement continue to be met, including timely completion of all Compact milestones. However, as the Compacts were signed prior to the 2004 designations process, the Agency cannot prejudice the outcome of designations. Consequently, States are advised that if EPA determines that any portion of a compact area should become part of an 8-hour ozone nonattainment area, that

portion would no longer be eligible for participation in the Early Action Compact, and the effective date of the nonattainment designation for that portion of the Compact would not be deferred. Also, as noted above, this proposed rulemaking does not propose to establish attainment/nonattainment designations, nor does it address the principles that will be considered in the designation process, nor does it take comment on the Early Action Compact program.

4. Did EPA Consider Other Options for Incentives for Areas That Take Early Actions for Reducing Ozone?

We did consider another option, which is discussed in a separate document available in the docket.⁸¹

5. What Is the Difference Between the Early Action Compact Program and the Transitional NSR Program?

Appendix D of this proposed rulemaking contains a table comparing the two programs. It should be noted that areas that may be initially eligible for the Early Action Compact but that become ineligible later may still be eligible for the transitional NSR program.

B. Clarification of How the Transition from 1-Hour to 8-Hour Standard Will Work for Early Action Compact Areas, for Conformity, and for NSR and PSD

Appendix E presents a table that describes our interpretation of the applicability of conformity and traditional NSR and PSD under the various potential transition scenarios. This table is included for informational purposes only and does not constitute part of the proposed rule. It is intended only to inform comment on the proposal itself. As discussed elsewhere in this preamble, we are proposing options for how areas will transition from the 1-hour standard to the 8-hour standard. Under one of the options, we would revoke the 1-hour standard 1 year after the effective date of the 8-hour designations. For Early Action Compact areas, the nonattainment designation for the 8-hour ozone standard is promulgated, but the effective date of that designation is deferred as long as the area continues to meet compact milestones. These milestones are described in the Holmstead memorandum referenced earlier. Shortly after December 2007 (*i.e.*, by

April 2008), we intend to make a determination of whether the area attained the 8-hour ozone standard. For all Compact areas, under the transition option described earlier in this paragraph, we would revoke the 1-hour standard for these areas 1 year after the effective date of the designation of attainment or nonattainment for the 8-hour standard. Therefore, on the 1-year effective date of the determination we make in April 2008, which will include the designation of Compact areas, the 1-hour standard would be revoked (in approximately May or June of 2009).

C. How Will EPA's Proposal Affect Funding Under the Congestion Mitigation and Air Quality Improvement (CMAQ) Program?

Depending on the specific characteristics of a nonattainment area, revocation of the 1-hour ozone standard will have varying effects on some Federal transportation program funds apportioned to the States through a formula established by the TEA-21. The TEA-21 establishes eligibility for the CMAQ program transportation funds for nonattainment and maintenance areas, designated under section 107(d) of the CAA (42 U.S.C. 7407(d)), provided the area is, or was, classified in accordance with CAA sections 181, 186, and 188. Eligibility, in part, establishes an area's ability to use CMAQ funding. Areas designated nonattainment after December 31, 1997 are also eligible, but without regard to classification.

The amount of CMAQ funds available to States for use in nonattainment and maintenance areas is set at levels authorized by TEA-21. The funds are apportioned to States through the statutory formula contained in section 104(b) of title 23. The formula is based on a State's weighted population, which takes into account the classifications of ozone and CO nonattainment and maintenance areas, and the population in such areas. The formula does not account for PM nonattainment areas.

As we revoke the 1-hour ozone standard under implementation of the new 8-hour ozone NAAQS, changes regarding the designation and classification of these nonattainment and maintenance areas, will change the amount of CMAQ funds apportioned to each State under the current apportionment formula, and thus available to these areas. Some States with 1-hour ozone nonattainment and maintenance areas will lose CMAQ funding while others may gain without a statutory change. The changes in funding will depend on how much a State's weighted population changes because of the revocation.

designations are based, we would designate the area as attainment without a deferred effective date.

⁸¹ 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.