

Furthermore, after revocation any 1-hour ozone nonattainment or maintenance area that is not also designated nonattainment under the 8-hour or the existing CO or PM-10 standards will lose the ability to spend CMAQ funding. Since 1-hour ozone designations will no longer be in force, the authorized ability to use CMAQ funds under 23 U.S.C. 149(b) will be limited to existing CO and PM-10 nonattainment and maintenance areas and areas designated after December 31, 1997, such as those designated under the 8-hour standard.

Finally, nonattainment areas designated under the 8-hour ozone standard would all be eligible for CMAQ funding, but the formula for determining the amount of funds apportioned to the States would only take into account the areas that are classified pursuant to CAA sections 181, 186, and 188. Areas designated but not classified under the 8-hour standard would not be included in the apportionment formula, and States with such areas will not receive any CMAQ funding because of those areas. As noted elsewhere in this proposal, EPA is requesting comment on various concepts for classifying nonattainment areas under the 8-hour standard.

We are aware that apportionment of CMAQ funds is calculated yearly and varies according to changing population, and severity of air pollution. The TEA-21 is due for reauthorization in October, 2003, and adjustments to the CMAQ eligibility criteria and apportionment formula may be possible. We understand the importance of CMAQ funding to States and nonattainment areas and are prepared to work with DOT and Congress to minimize the unintended impact of the 8-hour ozone NAAQS, on those funds.

D. Are There Any Environmental Impact Differences Between the Two Major Classification Options Being Proposed?

Both of the major classification options being proposed would result in attainment by an expeditious attainment date. However, the EPA analysis of costs of the options notes that they do not necessarily have the same environmental impact. The subpart 2-only option is more expensive for some of the 10 areas analyzed in the cost analysis—largely because subpart 2 ROP requires more emissions reductions, and it requires these reductions by 2008, 2 years earlier than the attainment date of 2010 that is assumed for the analysis areas. This would result in an earlier air quality benefit. We have not performed air quality modeling to determine the

increment of air quality benefit from the subpart 2-only option compared to the option under which some areas are covered under subpart 1.

IX. Statutory and Executive Order Reviews

Upon promulgation of the NAAQS, the CAA requires EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on the designation. This proposed rule fleshes out the statutory requirements that non-attainment areas are obligated to meet. In some instances, the statute is ambiguous regarding the statutory obligations that apply—thus we are proposing various options that we believe are consistent with the ambiguous language of the statute. One option attempts to provide a flexible and least-cost approach for States to apply to the sources that States may choose to regulate. The other option follows a more traditional statutory interpretation.⁸²

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is “significant” and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines “significant regulatory action” as one that is likely to result in a rule that may:

(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.”

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a “significant regulatory

action” because it raises novel legal or policy issues arising out of legal mandates. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Rather, this rule interprets the obligations established in the CAA for States to submit implementation plans in order to attain the 8-hour ozone NAAQS.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 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, for proposed and final rules with “Federal mandates” that may result in expenditures to State, local,

⁸² U.S. EPA, Cost, Emission Reduction, Energy, and Economic Impact Assessment of the Proposed Rule Establishing the Implementation Framework for the 8-hour, 0.08ppm Ozone National Ambient Air Quality Standard, prepared by the Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, Research Triangle Park, NC, April 24, 2003.