

revision “that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection (b)(2)(B) and (c)(2)(B) (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 108(f), and choose from among and implement such measures as necessary to demonstrate attainment.” In contrast the notice of proposed rulemaking stated “[e]nforceable transportation control strategies and measures to offset projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements”.

The commenter asserted that if EPA was changing the requirement for the Washington area from a requirement for measures to offset growth in vehicle emissions due to VMT growth or number of vehicle trips as necessary to attain or achieve ROP to one requiring measures to offset VMT growth or number of vehicle trips then EPA needs to conduct formal notice and comment rulemaking.

EPA's Response

EPA intent in section XII entitled “What would a Reclassification Mean for the Washington Area” of the notice of proposed rulemaking was not to change any requirement or any change current guidance or policy. In section XII of the notice of proposed rulemaking we merely outlined some of the major planning elements that the Washington area would have to include in a severe area SIP. EPA agrees that the summary description provided in the notice of proposed rulemaking would have better reflected the statutory requirement if it had said “enforceable transportation control strategies and measures to offset any growth in emissions due to projected growth in vehicle miles traveled or number of vehicle trips as necessary to demonstrate attainment and to achieve periodic emissions reduction requirements.”

I. 2002 Air Quality Data and Air Quality Improvement Since 1990

Summary of Public Comments Received

One commenter does not agree with EPA's statement in the notice of proposed rulemaking that the air quality

in the Washington area has improved significantly since 1990. The commenter claims the notice failed to consider air quality data for the 2002 ozone season and that the 2002 ozone season was the worst in a decade because there were nine days during which at least one monitor exceeded the 1-hour ozone NAAQS.

EPA's Response

Some of the air quality data trends presented in the notice of proposed rulemaking were for informational purposes only and do not form the basis for the action we announce in this document. The data relevant for purposes of making the statutory determination of whether the area attained by its deadline is that which shows the area did not attain by November 15, 1999.

As explained elsewhere in this document, section 181(b)(2)(A) of the Clean Air Act requires that when EPA determines that an area has not attained the standard by its statutorily required date the area shall be reclassified by operation of law to the higher of—

(1) The next higher classification for the area, or

(2) The classification applicable to the area's design value as determined at the time EPA publishes its notice that the area failed to attain.

Therefore, even if a serious area's design value at the time of reclassification is lower than the design value for serious nonattainment, that serious area cannot be reclassified to a lower classification because the minimum reclassification resulting from a failure to attain is severe. Likewise, the maximum reclassification is severe because even if an area's design value is beyond the extreme threshold section 181(b)(2) prohibits an area failing to attain from being reclassified to extreme nonattainment.

Therefore, unlike a marginal or moderate nonattainment area where the design value at the time of the reclassification could have a bearing on the final classification resulting from a failure to attain, a serious area can only be reclassified under section 181(b)(2) to severe nonattainment upon a finding of failure to attain because the only operative provision is that which requires reclassification to the next higher classification.

The design value data in the notice of proposed rulemaking was presented mainly as an indicator that had the area been classified for the first time, the area would have been classified as marginal.

The relevant air quality data for EPA's final determination of a failure to attain is that which shows the area contained

at least one monitor with an average annual number of expected exceedances for the 1997 through 1999, inclusive, period.

With respect to the 2002 air quality data, we did not present it in the notice of proposed rulemaking for the simple reason that insufficient final data was available for us to make a proper comparison with prior years data at the time the notice of proposed rulemaking was drafted.

Even taking into account the 2002 data, the Washington area's design value corresponds to that of a marginal area. The Washington area's air quality has by this measure improved from the time it was classified as a serious area based upon its design value.

J. Adequacy of Current SIP Submittals

Summary of Public Comments Received

One commenter does not agree that the Washington area states had ever submitted a modeled demonstration of attainment for the area.

EPA's Response

This comment is not germane to this action. EPA did not propose action on any SIP revision in the November 13, 2002, notice of proposed rulemaking. What action EPA takes on the SIP revisions formerly covered by the now vacated January 3, 2001, final rule will be the subject of separate rulemaking action(s). EPA will establish in a forthcoming notice of proposed rulemaking in the **Federal Register** a separate public comment period on these SIP revisions.

IV. What Is the Impact of Reclassification on Title V Operating Permit Programs?

In the November 13, 2002, notice of proposed rulemaking, EPA noted that additional sources would become subject to the Title V major stationary source operating permit program as a collateral consequence of a reclassification of the Washington area to severe. The affected sources are those with a potential to emit of more than 25 tons per year of either VOC or NO_x or both VOC and NO_x. Any newly major stationary sources must submit a timely Title V permit application. “A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish.” See 40 CFR 70.5(a)(1) and see 40 CFR 71.5(a)(1). On the effective date of this action that can be found in the **DATES** section of this final rule, the