

submitted on classifications merit the consideration of new alternatives and the opportunity for the public to review and comment on these alternatives. Below, we provide a brief summary of several alternative approaches submitted in the comments and indicate the docket number of relevant comment documents so that any interested person can review those comments.⁵ We then describe two specific approaches for incorporating some of these suggestions into a classification scheme for the 8-hour standard that, based on our initial review of the comments, seem the most promising for improving the implementation framework. While we are open to comment on any of the ideas suggested during the initial comment period, we are most interested in hearing comment on the concepts we have incorporated into the two alternative approaches we discuss below. We also provide comparisons of two alternatives with our previously proposed option 2 without the incentive feature. This does not imply that we have decided to not include the incentive feature, nor does it imply that we have decided not to adopt our proposed option 1. In addition, we may add to the docket additional material as it becomes available that relates to the two alternatives discussed below; readers should continue to check the electronic docket for any such material during the comment period.

Sequential Implementation. Several commenters contended that EPA does not have the authority to re-write the statute by modifying Table 1 in section 181(a) to reflect the 8-hour NAAQS (see e.g., comments from Electronics Industries Alliance, docket document OAR-2003-0079-0156; and Advanced Micro Devices, Inc., docket document OAR-2003-0079-0139). These commenters suggested that EPA adopt a sequential implementation scheme under which areas that are meeting the 1-hour NAAQS but not the 8-hour NAAQS would be designated in April 2004 as not meeting the 8-hour NAAQS and begin implementation under subpart 1. Areas that are still violating the 1-hour NAAQS would continue to implement the 1-hour NAAQS under subpart 2 and would not be designated for the 8-hour NAAQS or begin implementing that standard until the area attains the 1-hour NAAQS. At the time an area is designated nonattainment for the 8-hour NAAQS, it would be classified under subpart 1 for

that standard. Thus all areas would be classified under subpart 1 for the 8-hour NAAQS. This approach would eliminate the inequity issue by placing all 8-hour areas under subpart 1 and would allow more flexibility in setting attainment dates for areas although the maximum attainment period would be 10 years from designation. However, EPA believes that this approach conflicts with the Supreme Court's holding that the classification provisions of subpart 2 must apply for purposes of implementing the 8-hour NAAQS. See *Whitman v. ATA*, 121 S. Ct. 903, 917 (2001).

Use 8-hour design values exclusively under Option 2. Several commenters that supported option 2 recommended against using the 1-hour design value for determining which areas would be classified under subpart 1 and which would be classified under subpart 2. (See e.g., UARG, docket document OAR-2003-0079-0362; Kansas City Power & Light, docket document OAR-2003-0079-0185; TXU Energy docket document OAR-2003-0079-0204.) These commenters suggested that it would be more logical and more consistent with the nature of the 8-hour standard for EPA instead to translate the lowest 1-hour design value threshold in Table 1 into an approximate 8-hour equivalent. (The original translation table we proposed appears at 68 FR 32812 (June 2, 2003).) They point to the record in the rulemaking which established the 8-hour NAAQS and suggest that the approximate 8-hour equivalent of the 0.12 ppm 1-hour NAAQS is 0.090 ppm. [See, for instance, statement in third column, section D of 62 FR 38858 (July 18, 1997).] They recommend that rather than translating the lower bound for marginal areas in Table 1 of section 181 to 0.080 ppm or 0.085 ppm, EPA should start it at 0.090 ppm or 0.091 ppm, which they believe reflects the 8-hour "equivalent" of the 1-hour NAAQS. Thus, this approach would result in 8-hour nonattainment areas with design values less than that lower bound being covered under subpart 1. This approach, unlike our June 2, 2003 proposal, would result in all subpart 1 areas having 8-hour design values (an indication of the magnitude of the ozone problem) that are lower than any area covered under subpart 2.

Place all areas with a design value equivalent to "moderate" under subpart 2. The American Lung Association (docket document OAR-2003-0079-0111) suggested that under Option 2, all areas with an 8-hour design value equivalent to moderate or above should be classified under subpart 2. Thus, an area that is meeting the 1-hour standard

that would have been classified under subpart 1 under EPA's Option 2, based on its 8-hour design value, would instead be subject to subpart 2 if its 8-hour design value is equivalent to or greater than the design value for a moderate area under Table 1 of section 181 as modified to reflect 8-hour design values. This approach would eliminate much of the inequity that commenters believed could result if areas classified under subpart 1 have more significant 8-hour air quality problems than areas classified under subpart 2.

Establish classifications that better reflect an area's 8-hour problem. A variety of commenters were concerned that EPA's classification scheme places too many areas in the lower classifications.⁶ The commenters stated that the classification options lead to classifications for some areas that do not reflect the significance of the 8-hour problem in those areas and do not reflect the time needed for those areas to attain. (See, e.g., The American Petroleum Institute (API) docket document OAR-2003-0079-0281). They provided several suggestions for establishing a classification scheme that would classify areas in a way that better reflects their air quality problem. API provided 3 options while other commenters suggested alternatives similar to one or more of the alternatives suggested by API. (See e.g., ExxonMobile Refining & Supply docket document OAR-2003-0079-0212; Clean Air Task Force⁷ docket document OAR-2003-0079-0215; American Chemistry Council, docket document OAR-2003-0079-0217.)

API's suggested alternatives are as follows:

- Maintain a rebuttable presumption that an area's 1-hour classification would be retained under the 8-hour standard if the 1-hour classification was higher than the 8-hour classification.
- Translate the classification table using only one-half the percentage above the standard that each statutory classification threshold (or cutpoint) represents.⁸ (These percentages are

⁶ This comment was raised with respect to both Option 1 and Option 2.

⁷ Their rationale was that more areas should be placed in higher classifications to ensure that they implement the mandatory control measures contemplated by Congress and have a specified rate of reduction out to their attainment date. However, they believed our rule should require all 8-hour nonattainment areas to be covered under subpart 2.

⁸ The rationale for the 50 percent adjustment was that the 8-hour standard is more stringent than the 1-hour standard and that past air quality trends showed that 8-hour average ozone concentrations declined over the past 20 years at about half the rate that 1-hour averages declined. Thus, we would expect attainment for areas with 8-hour values a

⁵ We do not attempt to cite to all comments which may have raised a specific alternative; rather we try to cite examples of comments in which the alternatives were discussed.