A2001-31
I-K-03

John Silvasi

04/07/03 10:39 AM

To: Joann Allman/RTP/USEPA/US@EPA
cc:
Subject: to OMB: Re: 8-hr O3 NAAQS Implementation Proposed Rule--Information requested from 2/7/03 conference call

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----- Forwarded by John Silvasi/RTP/USEPA/US on 04/07/03 10:38 AM -----

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02/14/03 09:51 AM

To: Amy_L._Farrell@omb.eop.gov
cc: Allen Basala/RTP/USEPA/US@EPA, Arthur_G._Fraas@omb.eop.gov, Cecilia.Ho@fhwa.dot.gov, Denise Gerth/RTP/USEPA/US@EPA, Jan Tierney/DC/USEPA/US@EPA, jean.vernet@hq.doe.gov, Jim Ketcham-Colwill/DC/USEPA/US@EPA, John_A._List@cea.eop.gov, Keith.Holman@sba.gov, Kevin McLean/DC/USEPA/US@EPA, Lorraine_D._Hunt@omb.eop.gov, Lydia Wegman/RTP/USEPA/US@EPA, tammy.schirf@navy.mil, Tom Helms/RTP/USEPA/US@EPA
Subject: Re: 8-hr O3 NAAQS Implementation Proposed Rule--Information requested from 2/7/03 conference call

Hi, Amy,

I have tried to pull together responses to the questions you raised in your first email. I'm attaching the responses. I noticed you have 2 other emails in and will review them shortly.

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02/14/03 07:45 AM

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John_A._List@cea.eop.gov, Keith.Holman@sba.gov,
Cecilia.Ho@fhwa.dot.gov
Subject: Re: 8-hr O3 NAAQS Implementation Proposed Rule--Information requested from 2/7/03 conference call

John -
Thanks for the email. Art was at a conference most of yesterday and will be at
the same conference today. I'll work with Lorraine to find a couple of time options for a call next week and then I'll get back to you.

I'm going to forward comments we've received thus far (in separate emails). You
should also expect to see more on Tuesday.

Several first requests though:
1. Can you please provide an outline of Section D (starts on p. 79)?
2. Please describe the other options/paths not taken

3. Please develop a classification scheme with the number of areas falling in each category
-- 1-hour
-- 8-hour - subpart 1
- subpart 2

Also note that, given the data quality guidelines, the modeling/assumptions/etc
you've used to develop the projections of area classifications will need to be made available.

Again, we'll be back in touch with call times.
Thanks and have a great weekend,
Amy

(Embedded
image moved to file: pic30081.pcx)

Silvasi.John@epamail.epa.gov
02/13/2003 10:16:40 AM

Record Type: Record

To: Amy L. Farrell/OMB/EOP@EOP

cc: See the distribution list at the bottom of this message
Subject: Re: 8-hr O3 NAAQS Implementation Proposed Rule--Information requested
from 2/7/03 conference call

Hi, Amy,

At our call with Art et al. last Friday, Art had asked us to provide as follows; I'd like to respond and also request that you distribute it to Art and the other appropriate federal agency reps.

i. RACT--discuss 1998 option and propose as alternative--language being developed; will send as soon as completed

ii. NSR--transitional NSR option-how many areas eligible? See attached spreadsheet of areas--Sheet 1 contains information on all 122 hypothetical 8-hr O3 nonattainment areas. Sheet 2 identifies (in last column (J) indicated by a "1") which areas are potentially eligible for the transitional NSR option. There are 58 areas.(See attached file: transitional_candidates.xls)

iii. List/number of areas under subpart 2 that would have to develop a 15% VOC rate of progress plan (moderate and above areas) for first time (list & number generated). See attached spreadsheet (sheet 1) and summary table (sheet 2). In Sheet 1, Columns G, I, K, M indicated (by a "1") these areas for each of the classification options. Column O indicates (by a "1") which areas were originally designated moderate for the 1-hr standard but did not have to submit a 15% VOC ROP plan because they attained the 1-hr standard and were designated attainment without needing one. (See attached file: new_mod_areas_w_1_hr_non15pct_rop.xls)

iv. Send new transport wording to OMB--We have not received feedback from Jeff Holmstead yet on this, however. (See attached file: sect_g_transport_012203_omb.wpd)

v. Send both (long & short) PPT presentation to OMB-- sent earlier

vi. Call Art at end of next week.--Tom Helms & I will do that today. Is there a recommended time?

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transitional_candidates. new_mod_areas_w_1_hr_non15pct_r sect_g_transport_012203_omb.

Message Copied
To:

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OMB Q 1. Can you please provide an outline of Section D (starts on p. 79)?

RESPONSE: Near the beginning of the FR notice (starting on about p. 4 or 5) is an outline of the major portions of the entire proposal (down to the third tier of headings). In a 1/31/03 email, Denise Gerth had sent you an updated redline/strikeout version of Sections C and D; I am including here a complete outline of both of those sections in that 1/31/03 version. Per our discussion Friday, however, we are still redrafting these sections to make them clearer, and the structure is likely to change.

Outline of Sections C and D (1/31/01 version sent from Denise Gerth) from proposed rule for implementation of 8-hr ozone NAAQS.

Note: These 2 sections are currently under review & discussion within EPA and will be revised.

C. How will EPA transition from the 1-hour to the 8-hour standard?

1. Background
2. Options for the Transition from the 1-hour to the 8-hour Standard
    a. Option 1: Anti-backsliding Regulation.
    b. Option 2: Partial Retention of the 1-hour Standard for Limited Purposes Until the Area Attains the 1-hour Standard.
3. Request for Comment.
4. Other Possible Approaches for Transitioning.

D. What obligations will remain applicable requirements under the mechanism selected for transitioning from the 1-hour to the 8-hour standard?

1. Background on the CAA's Anti-Backsliding Provisions.
2. How will the CAA's anti-backsliding provisions work regarding current CAA requirements under the 1-hour ozone standard?
    a. Control obligations adopted in the SIP.
    b. Subpart 2 control obligations and ozone transport control obligations not yet met.
    c. RFP/ROP and Attainment SIPs for 1-Hour NAAQS. QS.
    d. New source review (NSR).
    e. Nonattainment and maintenance areas for the 1-hour standard that are designated attainment for the 8-hour standard.
    f. SIP Provisions Adopted to Address the NO_x SIP Call. g. Proposed Options for the Time Period During Which EPA's anti-backsliding regulation would apply.
        (i) Option 1.
        (ii) Option 2.
3. Alternative Approaches
4. How will EPA ensure that the public knows which areas must continue provisions under the 1-hour SIPs under the option of an anti-backsliding regulation?

OMB Q. 2. Please describe the other options/paths not taken

RESPONSE: All options that EPA considered that are not being proposed have been placed in a supplemental document that we would place in the docket. At each place in the FR notice where we identify that other options were considered, the FR proposal references this supplemental document. I am attaching the current draft of that document.

OMB Q 3. Please develop a classification scheme with the number of areas falling in each category
-- 1-hour
-- 8-hour - subpart 1
- subpart 2

RESPONSE: A table providing the possible classifications under the 8-hr standard under each of the options is in the FR notice (Table 3 of the notice, on p. 60 of my copy of the version sent to you on Jan. 2, 2003). I am reproducing it below. There is another table in the Powerpoint presentation that provides a summary for the 122 areas what their current 1-hour designation and classification. In addition, one of the spreadsheets I sent yesterday contains the list of the 122 hypothetical areas and their classification under each of the options; I'm also reproducing it below.

OMB Q 4. Also note that, given the data quality guidelines, the modeling/assumptions/etc you've used to develop the projections of area classifications will need to be made available.

RESPONSE: Note that the notice contains the following (p. 14/15 on my copy); would the references in the footnote address the need for documentation of the modeling and assumptions used for the projections?

"The EPA estimates that existing control measures (e.g., Federal motor vehicle standards, EPA's regional NO_x rule known as the NO_x SIP Call, and local measures already adopted under the CAA) will dramatically reduce the number of areas[1] not attaining the 8-hour ozone standard--

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[1]See discussion below on how EPA has developed hypothetical nonattainment areas for purposes of analysis of this proposed rulemaking and options. Modeling analyses for projections to 2007 are found in: U.S. Environmental Protection Agency, Office of Air and Radiation, Technical Support Document for the Heavy-Duty Engine and Vehicle Standards and Highway Diesel Fuel Sulfur Control Requirements: Air Quality Modeling Analyses. EPA420-R-00-028. December 2000. Located at: http://www.epa.gov/otaq/regs/hd2007/frm/r00028.pdf.

Information on the modeling analyses for projections to 2010 and 2020 are found in "Technical Addendum: Methodologies

from 122 in 2000 (using data from 1998, 1999, and 2000), to 51 in 2007, to 30 in 2010 and 13 in 2020. See Table 1 below."

Again, we'll be back in touch with call times.
Thanks and have a great weekend,
Amy

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for the Benefit Analysis of the Clear Skies Initiative." September 2002. This can be found at the following web site: http://www.epa.gov/clearskies/Tech_adden.PDF. Results are summarized in "Human Health and Environmental Benefits Achieved by the Clear Skies Initiative." July 1, 2002. http://www.epa.gov/clearskies/CSIhealth_env_benefits7-01.ppt .

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 DV)	0	1	1	6	53	61	0	122
Option 1 (8-hour DV)–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*	0	1	1	6	21	17	76	122

*Areas that would be moderate using their 8-hour design value but that are projected to attain by 2007 would be classified marginal.

CURRENT 1-HOUR DESIGNATION/CLASSIFICATION OF 122 HYPOTHETICAL AREAS*									
NONATTAINMENT (37 AREAS)							ATTAIN/MAINT		
Subpart 2						Subpart 1			
Extreme	Severe-17	Severe-15	Serious	Moderate	Marginal	Sub-marginal & others	Mainten-ance	Attain-ment	Total
1	5	3	11	2	12	3	39	46	122

*8-hour hypothetical areas do not have the same geographic definition as the current 1-hour areas

draft 2/12/03									
8-HR O3 NAAQS HYPOTHETICAL NONATTAINMENT AREAS									
(1998-2000 data)									
with incentive feature (switched classifications in italics)									
POTENTIAL CANDIDATES FOR TRANSITIONAL NSR OPTION									
									NSR trans
NAME	1-hr DV	8-hr DV	2007*	Counties	1-hr Classifi-cation	1-hr Main-tenance**	Pop	Opt 2	cand
Springfield (Western MA), MA	116	87	91	4	Serious		812,322	Subpart 1	
Boston-Lawrence-Worcester (E. MA), MA	119	93	90	14	Serious		6,010,259	Subpart 1	
Allentown-Bethlehem-Easton, PA-NJ	119	97	89	3	Marginal		595,081	Subpart 1	
Scranton-Wilkes-Barre-Hazleton, PA	113	97	89	5	Marginal		734,175	Subpart 1	
Pensacola, FL	118	94	88	2			344,406	Subpart 1	
Green Bay- Appleton-Oshkosh-Neenah-D	112	92	88	6	Marginal RT		519,992	Subpart 1	
Chicago-Gary-Lake County, IL-IN	120	93	87	13	Severe-17		8,218,705	Subpart 1	
Biloxi-Gulfport-Pascagoula, MS	118	92	87	3			312,368	Subpart 1	
Benton Harbor, MI	119	88	86	2			210,855	Subpart 1	
Indianapolis, IN	114	95	86	9		Marginal	1,380,491	Subpart 1	
Norfolk-Virginia Beach-Newport News, V	115	89	85	15		Marginal	1,443,244	Subpart 1	
Cincinnati-Hamilton, OH-KY-IN	119	99	84	14		Moderate	1,852,986	Subpart 1	1
Reading, PA	117	92	84	1		Moderate	489,108	Subpart 1	1
Mason Co, MI	116	89	84	1			25,537	Subpart 1	1
Tyler, TX	113	91	84	1			151,309	Subpart 1	1
Harrisburg-Lebanon-Carlisle, PA	117	95	83	5	Marginal		805,839	Subpart 1	1
York, PA	114	93	83	2	Marginal		417,848	Subpart 1	1
Erie, PA	113	90	83	1	Marginal		361,741	Subpart 1	1
Dayton-Springfield, OH	119	93	82	4		Moderate	951,270	Subpart 1	1
Youngstown-Warren-Sharon, PA-OH	117	92	82	4	Marginal		721,898	Subpart 1	1
Tampa-St. Petersburg-Clearwater, FL	117	86	82	4		Marginal	2,067,959	Subpart 1	1
Tulsa, OK	114	93	82	5			777,032	Subpart 1	1
Evansville-Henderson, IN-KY	114	91	82	4		Marginal	278,990	Subpart 1	1
Shreveport-Bossier City, LA	114	91	81	3			376,330	Subpart 1	1
Johnstown, PA	112	91	81	3	Marginal		319,344	Subpart 1	1
Houma, LA	111	87	81	3	Incomplete Data		182,842	Subpart 1	1
Austin-San Marcos, TX	110	88	81	5			889,268	Subpart 1	1
Greenville-Spartanburg-Anderson, SC	120	95	80	7		Marginal	970,011	Subpart 1	1
Mobile, AL	118	90	80	2			476,923	Subpart 1	1
South Bend-Elkhart, IN	114	86	80	2		Marginal	403,250	Subpart 1	1
Altoona, PA	113	89	80	1	Marginal		130,542	Subpart 1	1
Benzie Co, MI	110	89	80	1			12,200	Subpart 1	1
Greenville, NC	110	88	80	1			107,924	Subpart 1	1
Toledo, OH	106	85	80	3		Moderate	614,128	Subpart 1	1
Fayetteville, NC	117	93	79	1			342,388	Subpart 1	1
Columbia, SC	116	96	79	2			466,084	Subpart 1	1
Canton-Massillon, OH	110	91	79	2		Marginal	394,106	Subpart 1	1
Jamestown, NY	107	88	79	1			141,895	Subpart 1	1
Augusta-Aiken, GA-SC	117	93	78	6			435,477	Subpart 1	1
Huntsville, AL	111	91	78	2			293,047	Subpart 1	1
Lima, OH	107	89	78	2			154,340	Subpart 1	1
Fort Wayne, IN	102	90	78	6			456,281	Subpart 1	1
Janesville-Beloit, WI	101	86	78	1			759,508	Subpart 1	1
Cedar Co, MO	99	88	78	1			12,093	Subpart 1	1
Bowling Green, KY	116	94	77	2		Marginal RT	102,175	Subpart 1	1
Owensboro, KY	115	94	77	4		Marginal	104,681	Subpart 1	1
Columbus, GA-AL	113	93	77	4			260,860	Subpart 1	1
Asheville, NC	111	94	77	3			327,930	Subpart 1	1
Goldsboro, NC	109	87	77	3			201,935	Subpart 1	1
Buffalo-Niagara Falls, NY	107	89	77	2	Marginal		1,189,288	Subpart 1	1
Rocky Mount, NC	107	89	77	2			133,235	Subpart 1	1
Florence, SC	105	89	77	2			176,195	Subpart 1	1
Johnson City-Kingsport-Bristol, TN-VA	113	94	76	8			436,047	Subpart 1	1
Lafayette, LA	109	85	76	4		Sec 185A	345,165	Subpart 1	1
Parkersburg-Marietta, WV-OH	115	92	75	2		Moderate	149,169	Subpart 1	1
Lexington, KY	108	85	75	7		Marginal	405,936	Subpart 1	1
Hickory-Morganton-Lenoir, NC	114	92	74	4			292,409	Subpart 1	1
Little Rock-North Little Rock, AR	113	87	74	4			514,047	Subpart 1	1
Roanoke, VA	112	89	74	4			224,477	Subpart 1	1
Adams Co, MS	102	85	74	1			35,356	Subpart 1	1
Clay Co, AL	113	88	72	1			13,252	Subpart 1	1
Lee Co, MS	107	88	72	1			65,581	Subpart 1	1
Putnam Co, TN	106	91	71	1			51,373	Subpart 1	1
Albany, GA	98	85	71	3			142,812	Subpart 1	1
Florence, AL	107	89	69	3			166,630	Subpart 1	1
Pulaski Co, KY	103	88	68	1			49,489	Subpart 1	1
Clarksville-Hopkinsville, TN-KY	111	86	66	2			169,439	Subpart 1	1
Greenbrier Co, WV	108	89	65	1		Marginal	34,693	Subpart 1	1
Bell Co, KY	109	86	63	1			31,506	Subpart 1	1
Redding, CA	120	93	0	2			196,661	Subpart 1	
Yuba City, CA	116	89	0	2	Sec185A		122,643	Subpart 1	

Phoenix-Mesa, AZ	114	87	0	2	Serious		2,238,480	Subpart 1	
Denver-Boulder-Greeley, CO	112	86	0	7		Sec 185A	1,980,140	Subpart 1	
San Antonio, TX	109	85	0	4			1,324,749	Subpart 1	
Las Vegas, NV-AZ	106	85	0	3			867,812	Subpart 1	
Decatur, AL	102	86	0	2				Subpart 1	
Total # areas potentially eligible for NSR transitional option									58
Other areas on this list could potentially be eligible with additional local emission reductions									
* Areas with 0 were not modeled									
** Entry indicates area is maintenance area with its former NA classification									

	Opt 1 w/o incentive	Opt 1 w/incentive	Opt 2 w/o incentive	Opt 2 w/ incentive
new moderate or above areas for first time	29	12	8	5
1-hr former mod areas that did not implement 15% ROP	12	12	12	12
total 8-hr areas that would face 15% ROP req't for first time	41	24	20	17

8-hr O3 NAAQS Implementation Proposed Rule
Revised language on transport.

draft 1/22/03
from "nutshell" summary of rule:

G. Interstate Transport

EPA is taking comment on a proposed approach to the issue of interstate transport of ozone pollution and its precursors. Under this approach, any further requirements would be imposed through a separate rule, not through the 8-hour ozone implementation rule. The EPA plans to investigate the extent, severity and sources of interstate transport after the NO_x SIP call, which was issued in 1998, is implemented. If further remedial emission reductions are warranted, EPA would anticipate requiring these reductions in conjunction with a possible rule to reduce interstate pollution transport that contributes to unhealthy levels of $PM_{2.5}$ in downwind areas. The EPA believes that interstate transport should be addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know as they design their local attainment plans the extent to which air quality at the area's boundary will be improved.

From full proposal:

G. How will EPA address long-range transport of ground-level ozone and its precursors when implementing the 8-hour ozone standard?

1. Background.

Although much progress has been made to improve air quality, many States contain areas that have yet to attain the 1-hour ozone standard and/or that are violating the 8-hour ozone standard. Some areas are significantly affected by interstate ozone transport from upwind areas. Wind currents can transport ozone and NO_x, a primary precursor to ozone, long distances, affecting multiple States downwind of a source area. Legal and equity issues result when failure to control upwind sources creates a need for greater emissions reductions from local sources in order for a downwind area to achieve the ambient air quality standard. In some cases, a downwind area may not be able to attain the ozone standard until the transported emissions are controlled.

The 1990 Amendments to the CAA reflect general awareness by Congress that ozone is a regional, and not merely a local, problem. Section 110(a)(2)(D) provides one of the most important tools for addressing the problem of transport. This provision provides that a SIP must contain adequate provisions prohibiting the State's sources from emitting air pollutants in amounts that will contribute significantly to nonattainment, or interfere with

maintenance, in one or more downwind States. Section 110(k)(5) authorizes EPA to find that a SIP is substantially inadequate to meet any CAA requirement. If EPA makes such a finding, it must require the State to submit, within a specified period, a SIP revision to correct the inadequacy. The CAA further addresses interstate transport of pollution in section 126, which authorizes each State to petition EPA for a finding designed to protect that entity from upwind sources of air pollutants.

In the past several years, EPA has conducted two rulemakings to control interstate ozone transport in the eastern U.S. In 1998, EPA issued the NO_x SIP Call, which requires certain States in the eastern U.S. to meet Statewide NO_x emissions budgets (63 FR 57356, October 27, 1998. State programs to implement the rule focus on reducing emissions from electric power generators and large industrial emitters. In addition, in response to petitions submitted by several northeastern States under section 126 of the CAA, EPA issued the Section 126 Rule which established Federal control requirements for electric power generators and industrial boilers and turbines in upwind States (64 FR 28250, May 25, 1999 and 65 FR 2674, January 18, 2000). For both rules, the compliance date for achieving the required NO_x reductions is May 31, 2004. These two transport rules overlap considerably, with the NO_x SIP Call being the broader action affecting more States. All of the States affected by the Section 126 Rule are covered by the NO_x SIP Call. Therefore, EPA coordinated the two rulemakings and established a mechanism in the Section 126 Rule whereby that rule would be withdrawn for sources in a State where EPA approves a SIP meeting the NO_x SIP Call.[1] In the NO_x SIP Call and the Section 126 Rule, EPA made determinations of whether upwind sources are significantly contributing to downwind nonattainment problems under both the 1-hour and 8-hour ozone standards. In the final SIP call rule, EPA determined that the same level of reductions was needed to address transport for both the 1-hour and 8-hour standards. Under the Section 126 Rule, more States and sources are affected based on the 8-hour standard than the 1-hour standard. The EPA, however, stayed the 8-hour basis for both rules in response to the extensive and extended litigation that occurred concerning the establishment of the 8-hour ozone standard. The EPA will be addressing the 8-hour stays since on December 18, 2002, the Administrator has signed final rulemaking

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[1]As a result of court actions, certain circumstances upon which the Section 126 Rule withdrawal provision was based have changed. The compliance dates for the Section 126 Rule and the NO_x SIP Call have been delayed and the NO_x SIP Call has been divided into two phases. The EPA is currently conducting a rulemaking to update the withdrawal provision so that it will operate appropriately under these new circumstances.

on the UV-B issue and reaffirmed the 8-hour ozone standard (68 FR 614 (January 6, 2003)), which was remanded to EPA in ATA I, 175 F.3d 1027. The EPA anticipates it will take action to reinstate the 8-hour bases for both the NO_x SIP Call and the Section 126 Rule. These would then provide the initial basis for dealing with ozone transport as part of the implementation of the 8-hour standard.

In providing their views to EPA on the 8-hour ozone implementation rule, the Ozone Transport Commission (OTC) and other State commenters have told EPA that further steps are needed to reduce interstate transport of ozone and NO_x to assist downwind areas in meeting the 8-hour ozone standard. These commenters voiced concern about upwind emissions from power plants and other sources and transported pollution from upwind cities. These commenters have urged EPA to ensure that interstate transport of ozone and NO_x is addressed "up front," before 8-hour attainment SIPs are adopted. This approach would enable States to know what reductions will be required for purposes of reducing interstate pollution transport when they decide the quantity of emissions reductions needed and specific measures to be included in a local area's attainment SIP.

2. The EPA's Proposed Approach.

The EPA agrees that transport of ozone and its precursors should be dealt with "up front." As described above, EPA in 1998 promulgated the NO_x SIP call and took action on the section 126 petitions to define what States within the SIP call region must do to address the transport of ozone and NO_x for purposes of both the 1-hour and 8-hour standards. In response to questions raised about whether those actions were sufficient, EPA plans to conduct updated analyses to examine whether residual interstate ozone transport after the NO_x SIP call is implemented will significantly contribute to nonattainment in downwind areas. If, based on these analyses, EPA determines that significant transport would still exist, EPA would require additional reductions to address such significant transport.

As described in the Federal Register actions for the NO_x SIP call and section 126 rulemakings, EPA believes that it has the authority to define what States need to do to address interstate transport in advance of decisions regarding the designation of areas and in advance of the submission of SIPs to comply with the section 110 requirements for the 8-hour ozone standard. The EPA is contemplating whether to consider the issue of ozone transport in the context of a possible transport rulemaking that could address the transport of $PM_{2.5}$ precursors, including NO_x, since NO_x affects ambient concentrations of both $PM_{2.5}$ and ozone. If such a rulemaking is undertaken, EPA would conduct further analyses of ozone transport that could result in further requirements beyond the existing NO_x SIP Call. Addressing $PM_{2.5}$ and ozone transport together in such a rulemaking would provide an opportunity for the coordination of control efforts to help achieve attainment of

both the $PM_{2.5}$ and 8-hour ozone standards, both of which will rely on control of pollutants transported across State boundaries. The EPA woould welcome the input from States and other interested parties in such a rulemaking--if undertaken--as to how to deal with ozone transport effectively and equitably and on the technical and other issues that will have to be confronted as part of an evaluation of what further steps should be taken beyond the existing NO_x SIP Call to deal with ozone transport.

The EPA further notes that the proposed CSA, if enacted, would significantly reduce power generator NO_x emissions that EPA modeling shows will affect regional ozone levels after the NO_x SIP Call. The EPA modeling for the year 2010 shows that the 2008 Phase I NO_x limits on power generators in the proposed CSA would reduce maximum 8-hour ozone levels in many parts of the eastern U.S., including a number of areas likely to be designated nonattainment for the 8-hour standard. The modeling results are available on the web at www.epa.gov/clearskies.

Regardless of whether Congress enacts the CSA in a timely manner, the CAA requires States to develop SIPs that provide for attainment by deadlines in the CAA and requires States to have implementation plans that prohibit emissions that contribute significantly to nonattainment in other States.

3. Other Concerns about Transport.

The EPA realizes that even if a new national transport rule is pursued by EPA, attainment demonstrations for some areas would continue to be complicated by the effects of ozone and transport from upwind sources and other nonattainment areas in cases where upwind source controls are scheduled for implementation after the downwind area's attainment date (e.g., 2007 attainment date).

Downwind areas could be in one of two situations. In the first situation, an area might be receiving such high levels of transported ozone or ozone precursors that even if it reduced its emissions dramatically (e.g., totally eliminated its own emissions), the incoming ozone and precursors would be sufficient to continue to cause violations of the standard beyond the applicable attainment date. In the second situation, the area might be able to achieve additional local reductions sufficient to demonstrate attainment. In this second case, the question arises as to whether it is equitable to require those reductions or to allow more time for the reductions in the "upwind" area to take place.[2]

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[2]The CAA's requirement for reasonably available control measures (RACM) in section 172(c)(1) does require the SIP to include RACM; EPA has noted in policy elsewhere that a measure is RACM if it is technologically and economically feasible and if it would advance the attainment date. Thus, if there are measures available in the nonattainment area that would advance the attainment date--even if attainment

The EPA solicits comment on how to address this issue. The EPA believes that a subpart 1 area could be granted a later attainment date if warranted considering transport. For areas classified under subpart 2, the statute provides no express relief for these situations. The area does have the option of requesting to be classified to the next higher classification. Thus, where the demonstration of attainment is complicated by transport between two areas of different classifications, the State is still responsible for developing and submitting demonstrations which show that the standard will be attained by the applicable date. In other words, the State must provide for sufficient emissions reductions on a schedule that will ensure attainment in its area.

One approach would be for States to work together in a collaborative process to perform the necessary analyses to identify appropriate controls which will provide for attainment throughout the multi-State area. The EPA believes that the wording in sections 172(c)(1) and 182(b)(1)(A)(i) require the State to develop a plan providing such emissions reductions. States working together in a collaborative process could perform a comprehensive assessment of the impacts of all control measures being implemented in both the local and upwind areas. The analysis may show the extent to which the downwind area is dependent on upwind strategies while fully meeting its own requirements associated with its classification. And upwind areas may provide a comprehensive assessment of the impacts of all control measures being implemented on the downwind areas.

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is likely at a later date due to upwind emission reductions that occur later--then the CAA requires such measures to be in the SIP.