

March 28, 2000

MEMORANDUM

SUBJECT: 8-Hour Designations

FROM: John S. Seitz, Director  
Office of Air Quality Planning and Standards (MD-10)

TO: Air Directors, Regions I-X

This memorandum is to update you on EPA's plans to designate areas as attainment/unclassifiable or nonattainment for the 8-hour ozone standard.<sup>1</sup> Many States and localities have expressed concern that areas that are newly designated nonattainment for ozone under the 8-hour standard will not be in a position to comply with conformity and other requirements in July 2000, the date by which EPA is to make designations under TEA-21. This memorandum outlines the process we intend to use. A separate guidance document, "Boundary Guidance on Air Quality Designations for the 8-Hour Ozone National Ambient Air Quality Standards," provides further detail on the process and the criteria for drawing boundaries for nonattainment areas.

The EPA is committed to ensuring that all stakeholders have an opportunity to participate in the designation process, and that State and local officials have ample time to comply with requirements that are applicable when designations become effective.

The designation process has several steps. On June 25, 1999, we issued a guidance memorandum requesting that States submit the most recent, complete, quality-assured ozone monitoring data identifying the monitors where exceedances of the 8-hour standard have occurred. Today EPA is issuing a guidance document that describes the criteria for drawing boundaries for nonattainment areas. Governors will have until June 30, 2000, to submit to EPA their recommendations for area designations and boundaries, which will give States several months to work with local governments, metropolitan planning organizations, citizens and other stakeholders to prepare the Governors' recommendations. The EPA will then review and respond

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<sup>1</sup>The EPA promulgated the 8-hour ozone NAAQS on July 18, 1997. The NAAQS was challenged and the court remanded, but did not vacate, the standard. *American Trucking Assoc. v. EPA*, 175 F.3d 1027, *on rehearing* 195 F.3d 4 (D.C. Cir. 1999). The court expressly noted that EPA is required to designate areas for any revised standard in accordance with section 107(d)(1)(B) of the Act. 175 F.3d at 1047-48. The schedule for designations for the 8-hour standard under section 107(d)(1)(B) was modified by the Transportation Equity Act for the Twenty-First Century to provide an additional year. Pub. L. No. 105-78, 112 Stat. 107 (June 9, 1998) (TEA-21).

to the State recommendations with its suggested designations (including boundaries) in late summer. EPA will not make final designations prior to late December because it cannot make them until at least 4 months (120 days) after responding to the States, pursuant to a Clean Air Act requirement. After EPA makes the final designations, it will publish them in the Federal Register and set a date on which they become effective. Historically, the effective date of a rule is usually 30 to 60 days after publication, but can be later. Given this process, designations could not become effective prior to early 2001 at the earliest, nor would conformity or other requirements become applicable prior to that time. In the process of determining when to finalize the proposed designations and make them effective, EPA will carefully consider time needed to prepare for any applicable requirements, as well as the status of ongoing litigation and administrative proceedings.

We recognize that the litigation on the 8-hour ozone standard will influence when the standard can be fully implemented, but State and local planners should begin the processes for recommending areas for designation. We are committed to working with officials in the affected States and areas to assist them as they move forward with strong and participatory processes that inform the public about the air quality levels in their areas, while ensuring ample notice prior to the effective date of any new regulatory requirements.

cc: Deputy Regional Administrators, Regions I-X  
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