

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 51.856 and the public participation requirements of § 51.857.

(f) The implementation plan revision required in § 51.851 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

### Subpart X—Provisions for Implementation of 8-hour Ozone National Ambient Air Quality Standard

SOURCE: 69 FR 23996, Apr. 30, 2004, unless otherwise noted.

#### § 51.900 Definitions.

The following definitions apply for purposes of this subpart. Any term not defined herein shall have the meaning as defined in 40 CFR 51.100.

(a) *1-hour NAAQS* means the 1-hour ozone national ambient air quality standards codified at 40 CFR 50.9.

(b) *8-hour NAAQS* means the 8-hour ozone national ambient air quality standards codified at 40 CFR 50.10.

(c) *1-hour ozone design value* is the 1-hour ozone concentration calculated according to 40 CFR part 50, Appendix H and the interpretation methodology issued by the Administrator most recently before the date of the enactment of the CAA Amendments of 1990.

(d) *8-Hour ozone design value* is the 8-hour ozone concentration calculated according to 40 CFR part 50, appendix I.

(e) *CAA* means the Clean Air Act as codified at 42 U.S.C. 7401–7671q (2003).

(f) *Applicable requirements* means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment or unclassifiable:

(1) Reasonably available control technology (RACT).

(2) Inspection and maintenance programs (I/M).

(3) Major source applicability cut-offs for purposes of RACT.

(4) Rate of Progress (ROP) reductions.

(5) Stage II vapor recovery.

(6) Clean fuels fleet program under section 183(c)(4) of the CAA.

(7) Clean fuels for boilers under section 182(e)(3) of the CAA.

(8) Transportation Control Measures (TCMs) during heavy traffic hours as provided under section 182(e)(4) of the CAA.

(9) Enhanced (ambient) monitoring under section 182(c)(1) of the CAA.

(10) Transportation controls under section 182(c)(5) of the CAA.

(11) Vehicle miles traveled provisions of section 182(d)(1) of the CAA.

(12) NO<sub>x</sub> requirements under section 182(f) of the CAA.

(g) *Attainment year ozone season* shall mean the ozone season immediately preceding a nonattainment area's attainment date.

(h) *Designation for the 8-hour NAAQS* shall mean the effective date of the 8-hour designation for an area.

(i) *Higher classification/lower classification*. For purposes of determining whether a classification is higher or lower, classifications are ranked from

lowest to highest as follows: classification under subpart 1 of the CAA; marginal; moderate; serious; severe-15; severe-17; and extreme.

(j) *Initially designated* means the first designation that becomes effective for an area for the 8-hour NAAQS and does not include a redesignation to attainment or nonattainment for that standard.

(k) *Maintenance area for the 1-hour NAAQS* means an area that was designated nonattainment for the 1-hour NAAQS on or after November 15, 1990 and was redesignated to attainment for the 1-hour NAAQS subject to a maintenance plan as required by section 175A of the CAA.

(l) *Nitrogen Oxides (NO<sub>x</sub>)* means the sum of nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(m) *NO<sub>x</sub> SIP Call* means the rules codified at 40 CFR 51.121 and 51.122.

(n) *Ozone season* means for each State, the ozone monitoring season as defined in 40 CFR Part 58, Appendix D, section 2.5 for that State.

(o) *Ozone transport region* means the area established by section 184(a) of the CAA or any other area established by the Administrator pursuant to section 176A of the CAA for purposes of ozone.

(p) *Reasonable further progress (RFP)* means for the purposes of the 8-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA.

(q) *Rate of progress (ROP)* means for purposes of the 1-hour NAAQS, the progress reductions required under section 172(c)(2) and section 182(b)(1) and (c)(2)(B) and (c)(2)(C) of the CAA.

(r) *Revocation of the 1-hour NAAQS* means the time at which the 1-hour NAAQS no longer apply to an area pursuant to 40 CFR 50.9(b).

(s) *Subpart 1 (CAA)* means subpart 1 of part D of title I of the CAA.

(t) *Subpart 2 (CAA)* means subpart 2 of part D of title I of the CAA.

(u) *Attainment Area* means, unless otherwise indicated, an area designated as either attainment, unclassifiable, or attainment/unclassifiable.

#### § 51.901 Applicability of part 51.

The provisions in subparts A through W of part 51 apply to areas for purposes of the 8-hour NAAQS to the extent they are not inconsistent with the provisions of this subpart.

#### § 51.902 Which classification and non-attainment area planning provisions of the CAA shall apply to areas designated nonattainment for the 8-hour NAAQS?

(a) *Classification under subpart 2 (CAA)*. An area designated nonattainment for the 8-hour NAAQS with a 1-hour ozone design value equal to or greater than 0.121 ppm at the time the Administrator signs a final rule designating or redesignating the area as nonattainment for the 8-hour NAAQS will be classified in accordance with section 181 of the CAA, as interpreted in § 51.903(a), for purposes of the 8-hour NAAQS, and will be subject to the requirements of subpart 2 that apply for that classification.

(b) *Covered under subpart 1 (CAA)*. An area designated nonattainment for the 8-hour ozone NAAQS with a 1-hour design value less than 0.121 ppm at the time the Administrator signs a final rule designating or redesignating the area as nonattainment for the 8-hour NAAQS will be covered under section 172(a)(1) of the CAA and will be subject to the requirements of subpart 1.

#### § 51.903 How do the classification and attainment date provisions in section 181 of subpart 2 of the CAA apply to areas subject to § 51.902(a)?

(a) In accordance with section 181(a)(1) of the CAA, each area subject to § 51.902(a) shall be classified by operation of law at the time of designation. However, the classification shall be based on the 8-hour design value for the area, in accordance with Table 1 below, or such higher or lower classification as the State may request as provided in paragraphs (b) and (c) of this section. The 8-hour design value for the area shall be calculated using the three most recent years of air quality data. For each area classified under this section, the primary NAAQS attainment date for the 8-hour NAAQS shall be as expeditious as practicable