

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA**

SIERRA CLUB,

Petitioners,

v.

U.S. ENVIRONMENTAL PROTECTION  
AGENCY and ANDREW WHEELER, Acting  
Administrator, U.S. Environmental Protection  
Agency

Respondents.

Case No. 18-1262

**PETITION FOR REVIEW**

Pursuant to the Clean Air Act § 307(b)(1), 42 U.S.C. § 7607(b)(1), Rule 15 of the Federal Rules of Appellate Procedure, and D.C. Circuit Rule 15, Sierra Club petitions this Court for review of the U.S. Environmental Protection Agency’s (“EPA”) final rule entitled *Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards —San Antonio, Texas Area*, 83 Fed. Reg. 35,136 (July 25, 2018) (Attachment A) [hereinafter, “Additional Air Quality Designations”].

Jurisdiction and venue for this petition is proper in the D.C. Circuit Court of Appeals under 42 U.S.C. § 7607(b)(1) because the Additional Air Quality Designations are a supplement to—and the action “completes”—EPA’s “nationally

applicable regulations” designating all areas of the country under the 2015 Ozone National Ambient Air Quality Standards (“NAAQS”), all of which are codified at 40 C.F.R. Part 81. *See* 83 Fed. Reg. at 35,136; *see also Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards*, 82 Fed. Reg. 54,232 (Nov. 16, 2017); *Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards* 83 Fed. Reg. 25,776 (June 4, 2018). Even if the Additional Air Quality Designations are only “locally or regionally applicable,” jurisdiction and venue still lie in the D.C. Circuit Court of Appeals because EPA’s air quality designations under the 2015 ozone NAAQS are collectively “based on a determination of nationwide scope or effect.” *See* 82 Fed. Reg. at 54,234-35; 83 Fed. Reg. 25,783.<sup>1</sup>

Accordingly, jurisdiction and venue for this petition are proper in this Court under 42 U.S.C. § 7607(b), and this petition should be consolidated with pending petitions challenging EPA’s 2015 ozone NAAQS area designations for the rest of the country, 83 Fed. Reg. 25,776 (June 4, 2018).<sup>2</sup> This petition for review is timely

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<sup>1</sup> Concurrently with this petition, Sierra Club is filing a petition for reconsideration, requesting that EPA make a formal finding that the Additional Air Quality Designations are, like all of the agency air quality designations under the 2015 ozone NAAQS, based on a determination of nationwide scope or effect.

<sup>2</sup> *Wisconsin v. EPA*, No. 18-1203 (D.C. Cir. filed Aug. 3, 2018); *Bd. of Comm’rs of Boulder County v. EPA*, No. 18-1205 (D.C. Cir. filed Aug. 3, 2018); *Env’tl. Law and Policy Ctr. v. EPA*, No. 18-1206 (D.C. Cir. filed Aug. 3, 2018); *State of Illinois v. EPA*, No. 18-1208 (D.C. Cir. filed Aug. 3, 2018); *City of Sunland Park*,

filed within sixty days of the date of publication in the Federal Register. 42 U.S.C. § 7607(b)(1).

Dated: September 21, 2018

Respectfully submitted,

/s/ Joshua Smith

Joshua Smith

Sierra Club

D.C. Circuit #56284

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*New Mexico v. EPA*, No. 18-1212 (D.C. Cir. filed Aug. 3, 2018); *Sierra Club v. Wheeler*, No. 18-1214 (D.C. Cir. Filed Aug. 3, 2018).

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**RULE 26.1 DISCLOSURE STATEMENT**

Petitioner Sierra Club makes the following disclosures, pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1:

**Sierra Club**

*Non-Governmental Corporate Party to this Action:* Sierra Club

*Parent Corporation(s):* None

*Publicly Held Company that Owns 10% or More of Party's Stock:* None.

*Party's General Name and Purpose:* Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment.

Dated: September 21, 2018

Respectfully submitted,

/s/ Joshua Smith

Joshua Smith

Sierra Club

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*Counsel for Sierra Club*

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Circuit Rule 15(a), a copy of the foregoing Petition for Review and Rule 26.1 Disclosure Statement was served on September 21, 2018 by certified mail, return receipt requested on the following:

Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

U.S. Department of Justice  
Environmental and Natural Resources  
Division  
Law and Policy Section  
950 Pennsylvania Avenue, NW  
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Correspondence Control Unit  
Office of General Counsel (2311)  
United States Environmental Protection  
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William Jefferson Clinton Federal  
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1200 Pennsylvania Avenue, NW  
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Andrew Wheeler  
Acting Administrator  
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Dated: September 21, 2018

/s/ Lauren Hogrewe  
Litigation Assistant  
Sierra Club  
Environmental Law Program

**ATTACHMENT A**

■ 10. Add table 2 to subpart LLL of part 63 to read as follows:

TABLE 2 TO SUBPART LLL OF PART 63—1989 TOXIC EQUIVALENCY FACTORS (TEFs)

Dioxins/Furans	TEFs 1989
2,3,7,8-TCDD .....	1
1,2,3,7,8-PeCDD .....	0.5
1,2,3,4,7,8-HxCDD .....	0.1
1,2,3,6,7,8-HxCDD .....	0.1
1,2,3,7,8,9-HxCDD .....	0.1
1,2,3,4,6,7,8-HpCDD .....	0.01
OCDD .....	0.001
2,3,7,8-TCDF .....	0.1
1,2,3,7,8-PeCDF .....	0.05
2,3,4,7,8-PeCDF .....	0.5
1,2,3,4,7,8-HxCDF .....	0.1
1,2,3,6,7,8-HxCDF .....	0.1
1,2,3,7,8,9-HxCDF .....	0.1
2,3,4,6,7,8-HxCDF .....	0.1
1,2,3,4,6,7,8-HpCDF .....	0.01
1,2,3,4,7,8,9-HpCDF .....	0.01
OCDF .....	0.001

[FR Doc. 2018-15718 Filed 7-24-18; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 81**

[EPA-HQ-OAR-2017-0548; FRL-9981-17-OAR]

RIN 2060-AU13

**Additional Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards—San Antonio, Texas Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is establishing initial air quality designations for the eight counties in the San Antonio-New Braunfels, Texas Core Based Statistical Area (CBSA) for the 2015 primary and secondary national ambient air quality standards (NAAQS) for ozone. The EPA is designating Bexar County as the San Antonio, Texas nonattainment area and the remaining seven counties as attainment/unclassifiable areas. The San Antonio, Texas nonattainment area is also being classified as Marginal by operation of law according to the severity of its air quality problem. Of the five classification categories, Marginal nonattainment areas have ozone levels that are closest to the ozone NAAQS at the time of designation. This action completes the initial designations for the 2015 ozone NAAQS. The EPA designated all other areas of the country

for the 2015 ozone NAAQS in actions signed by the Administrator on November 6, 2017, and April 30, 2018.

**DATES:** The effective date of this rule is September 24, 2018.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2017-0548. All documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

In addition, the EPA has established a website for rulemakings for the initial area designations for the 2015 ozone NAAQS at <https://www.epa.gov/ozone-designations>. The website includes the EPA's final designations, as well as designation recommendation letters from states and tribes, the EPA's 120-letters notifying the states whether the EPA intends to modify the state's recommendation, technical support documents, responses to comments and other related technical information.

The public may also inspect this rule and state-specific technical support information in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.

**FOR FURTHER INFORMATION CONTACT:** Denise Scott, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-01, Research Triangle Park, NC 27711, phone number (919) 541-4280, email: [scott.denise@epa.gov](mailto:scott.denise@epa.gov) or Carrie Paige, U.S. Environmental Protection Agency, Region 6, Mail Code: 6MM-AB, 445 Ross Avenue, Dallas, TX 75202, telephone (214) 665-6521, email: [paige.carrie@epa.gov](mailto:paige.carrie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

The following is an outline of the preamble.

I. Preamble Glossary of Terms and Acronyms

- II. What is the purpose of this action?
- III. What is ozone and how is it formed?
- IV. What are the 2015 ozone NAAQS and the health and welfare concerns they address?
- V. What are the CAA requirements for air quality designations?
- VI. What is the chronology for this designations rule and what guidance did the EPA provide?
- VII. What air quality data has the EPA used to designate the counties in the San Antonio-New Braunfels, Texas CBSA for the 2015 ozone NAAQS?
- VIII. What are the ozone air quality classifications?
- IX. Where can I find information forming the basis for this rule and exchanges between the EPA and the state?
- X. Environmental Justice Concerns
- XI. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review
  - B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs
  - C. Paperwork Reduction Act (PRA)
  - D. Regulatory Flexibility Act (RFA)
  - E. Unfunded Mandates Reform Act (UMRA)
  - F. Executive Order 13132: Federalism
  - G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
  - I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
  - J. National Technology Transfer and Advancement Act (NTTAA)
  - K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
  - L. Congressional Review Act (CRA)
  - M. Judicial Review

**I. Preamble Glossary of Terms and Acronyms**

The following are abbreviations of terms used in the preamble.

- APA Administrative Procedure Act
- CAA Clean Air Act
- CFR Code of Federal Regulations
- CBSA Core Based Statistical Area
- DC District of Columbia
- EPA Environmental Protection Agency
- FR Federal Register
- NAAQS National Ambient Air Quality Standards
- NO<sub>x</sub> Nitrogen Oxides
- NTTAA National Technology Transfer and Advancement Act
- PPM Parts per million
- RFA Regulatory Flexibility Act
- UMRA Unfunded Mandate Reform Act of 1995
- TAR Tribal Authority Rule
- U.S. United States
- U.S.C. United States Code
- VOC Volatile Organic Compounds

## II. What is the purpose of this action?

The purpose of this action is to announce and promulgate initial area designations for the eight counties in the San Antonio-New Braunfels, Texas CBSA with respect to the 2015 primary and secondary NAAQS for ozone, in accordance with the requirements of Clean Air Act (CAA) section 107(d). The EPA is designating Bexar County as the San Antonio, Texas nonattainment area and the remaining seven counties as attainment/unclassifiable areas. With this designation action, the EPA has completed the initial designations for all areas of the country for the 2015 ozone NAAQS.

In addition, this action announces the classification for the San Antonio, Texas nonattainment area as Marginal. The classification occurs by operation of law at the time of designation based on the severity of the area's ozone air quality problem. The classification categories are Marginal, Moderate, Serious, Severe and Extreme. The EPA established the air quality thresholds that define the classifications in a separate rule titled, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications Approach" (Classifications Rule) (83 FR 10376; March 9, 2018).

The list of the areas being designated in this action appears in the regulatory table for Texas included at the end of this final rule. This table, which will amend 40 CFR part 81, identifies the designation for each area and the classification for the nonattainment area.

The EPA is basing the designations on the most recent 3 years of certified ozone air quality monitoring data (2015–2017) and on an evaluation of factors to assess contributions to nonattainment in nearby areas. State areas designated as nonattainment are subject to planning and emission reduction requirements as specified in CAA part D. Requirements vary according to an area's classification. On November 17, 2016, the EPA proposed an implementation rule for the 2015 ozone NAAQS (81 FR 81276). The EPA anticipates issuing the final implementation rule in 2018. This final implementation rule, along with additional forthcoming tools and guidance documents related to provisions for regulatory relief to address background and international ozone concentrations, should help nonattainment areas to address these emissions in state plans. In particular, the EPA recognizes that the information provided by Texas regarding likely

future ozone trends and the role of international transport may provide an avenue to help the state demonstrate this area attains the 2015 ozone NAAQS by the attainment date or is otherwise entitled to regulatory relief.

## III. What is ozone and how is it formed?

Ground-level ozone is a gas that is formed by the reaction of volatile organic compounds (VOCs) and oxides of nitrogen (NO<sub>x</sub>) in the atmosphere in the presence of sunlight. These precursor emissions are emitted by many types of pollution sources, including power plants and industrial emissions sources, on-road and off-road motor vehicles and engines and smaller sources, collectively referred to as area sources. Ozone is predominately a summertime air pollutant. However, high ozone concentrations have also been observed in cold months, where a few areas in the western United States (U.S.) have experienced high levels of local VOC and NO<sub>x</sub> emissions that have formed ozone when snow is on the ground and temperatures are near or below freezing. Ozone and ozone precursors can be transported to an area from sources in nearby areas or from sources located hundreds of miles away. For purposes of determining ozone nonattainment area boundaries, the CAA requires the EPA to include areas that contribute to nearby violations of the NAAQS.

## IV. What are the 2015 ozone NAAQS and the health and welfare concerns they address?

On October 1, 2015, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.070 parts per million (ppm) (annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years).<sup>1</sup> The level of both the primary and secondary ozone NAAQS previously set in 2008 is 0.075 ppm. The 2015 ozone NAAQS retain the same general form and averaging time as the 2008 ozone NAAQS.

The primary ozone standards provide protection for children, older adults, people with asthma or other lung diseases and other at-risk populations against an array of adverse health effects that include reduced lung function, increased respiratory symptoms and pulmonary inflammation; effects that contribute to emergency department visits or hospital admissions; and mortality. The secondary ozone standards protect against adverse effects

to the public welfare, including those related to impacts on sensitive vegetation and forested ecosystems.

## V. What are the CAA requirements for air quality designations?

When the EPA promulgates a new or revised NAAQS, the EPA is required to designate all areas in the country as nonattainment, attainment or unclassifiable, pursuant to section 107(d)(1) of the CAA. Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as, "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant." If an area meets either prong of this definition, states should recommend and the EPA is obligated to designate the area as "nonattainment." CAA section 107(d)(1)(A)(ii) defines an attainment area as any area that does not meet the definition of nonattainment and that meets the NAAQS. CAA section 107(d)(1)(A)(iii) provides that any area that the EPA cannot designate on the basis of available information as meeting or not meeting the standards should be designated as "unclassifiable." Historically for ozone, the EPA has designated most areas that do not meet the definition of nonattainment as "unclassifiable/attainment." This category includes areas that have air quality monitoring data meeting the NAAQS and areas that do not have monitors but for which the EPA has no evidence that the areas may be violating the NAAQS or contributing to a nearby violation. In the designations for the 2015 ozone NAAQS, the EPA has reversed the order of the label to be attainment/unclassifiable to better convey the definition of the designation category and so that the category is more easily distinguished from the separate unclassifiable category. In a few instances, based on circumstances where some monitoring data are available but are not sufficient for a determination that an area is or is not attaining the NAAQS, the EPA has designated an area as "unclassifiable." Section 107(d)(1)(B) of the CAA requires the EPA to issue initial area designations within 2 years of promulgating a new or revised NAAQS. However, if the Administrator has insufficient information to make these designations within that time frame, the EPA has the authority to extend the deadline for designation decisions by up to 1 additional year.

By not later than 1 year after the promulgation of a new or revised

<sup>1</sup> See 80 FR 65296; October 26, 2015, for a detailed explanation of the calculation of the 3-year 8-hour average and 40 CFR part 50, Appendix U.

NAAQS, each state governor is required to recommend air quality designations, including the appropriate boundaries for areas, to the EPA. (See CAA section 107(d)(1)(A).) The EPA reviews those state recommendations and is authorized to make any modifications the Administrator deems necessary. The statute does not define the term “necessary,” but the EPA interprets this to authorize the Administrator to modify designation recommendations that are inconsistent with the statutory language, including modification of recommended boundaries for nonattainment areas that are not supported by the facts or analysis. If the EPA intends to modify a state’s recommendation, section 107(d)(1)(B) of the CAA requires the EPA to notify the state of any such intended modifications not less than 120 days prior to the EPA’s promulgation of the final designation. These notifications are commonly known as the “120-day letters.” If the state does not agree with the EPA’s intended modification, the 120-day period provides an opportunity for the state to demonstrate to the EPA why it believes any modification proposed by the EPA is inappropriate. If a state fails to provide any recommendation for an area, in whole or in part, the EPA must promulgate a designation that the Administrator deems appropriate.

The terms “contributes to” and “nearby” in the definition of a nonattainment area are not defined in the statute and the EPA has discretion to interpret these ambiguous terms, based on considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the relevant NAAQS and any other relevant information. The EPA does not interpret the statute to require the agency to establish bright line tests or thresholds for what constitutes “contribution” or “nearby” for purposes of designations.<sup>2</sup>

Section 301(d) of the CAA authorizes the EPA to approve eligible Indian tribes to implement provisions of the CAA on Indian reservations and other areas within the tribes’ jurisdiction. The Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, sets forth the criteria and process for tribes to apply to the EPA for eligibility to administer CAA programs. The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by the EPA for treatment of tribes in the same manner as states. Under the TAR, tribes

generally are not subject to the same submission schedules imposed by the CAA on states. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to the EPA.

#### **VI. What is the chronology for this designations rule and what guidance did the EPA provide?**

On February 25, 2016, the EPA issued guidance for states and tribal agencies to use for purposes of making designation recommendations as required by CAA section 107(d)(1)(A). (See February 25, 2016, memorandum from Janet G. McCabe, Acting Assistant Administrator, to Regional Administrators, Regions 1–10, titled, “Area Designations for the 2015 Ozone National Ambient Air Quality Standards” (Designations Guidance)). The Designations Guidance provided the anticipated timeline for designations and identified important factors that the EPA recommended states and tribes consider in making their recommendations and that the EPA intended to consider in promulgating designations. These factors include air quality data, emissions and emissions-related data, meteorological data, geography/topography and jurisdictional boundaries. In the Designations Guidance, the EPA asked that states and tribes submit their designation recommendations, including appropriate area boundaries, to the EPA by October 1, 2016.<sup>3</sup> In the guidance, the EPA indicated the agency expected to complete the initial designations for the 2015 ozone NAAQS on a 2-year schedule, by October 1, 2017, consistent with CAA 107(d)(1)(B)(i).

On November 6, 2017, the EPA designated about 85 percent of the counties in the U.S., including tribal lands within those counties.<sup>4</sup> Consistent

<sup>3</sup> The EPA previously issued two guidance memoranda related to designating areas of Indian country that also apply for designations for the 2015 ozone NAAQS. (See December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, “Policy for Establishing Separate Air Quality Designations for Areas of Indian Country” and December 20, 2011, memorandum from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Regions I–X, titled, “Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process.”)

<sup>4</sup> Although the EPA commonly uses the term “counties” when speaking of designations, we note that the reference to “counties” also includes non-county administrative or statistical areas that are comparable to counties. For example, Louisiana parishes; the organized boroughs of Alaska; the District of Columbia and the independent cities of the states of Virginia, Maryland, Missouri and

with the EPA’s Tribal Designation Guidance, the EPA designated two areas of Indian country as separate areas.

On December 4, 2017, a coalition of environmental and health organizations filed suit against the EPA claiming that the EPA failed to meet its mandatory obligation to designate all areas of the U.S. for the 2015 ozone NAAQS by October 1, 2017. *American Lung Association, et al v. Pruitt* (N.D. Cal. No. 4:17-cv-06900). A coalition of 15 states also filed a similar suit on December 5, 2017. *State of California v. Pruitt* (N.D. Cal. No. 4:17-cv-06936). In a March 12, 2018, order, the court granted the motions in part and ordered the EPA “to promulgate final designations for all areas of the country except for the eight undesignated counties composing the San Antonio area no later than April 30, 2018” and “to promulgate final designations for the San Antonio area no later than 127 days from the date of this order.” Thus, the designation deadline for the San Antonio area was set to July 17, 2018.

On March 19, 2018, the EPA sent a 120-day letter to the Governor of Texas notifying the state of the EPA’s preliminary response to the state’s recommendations for the eight counties in the San Antonio-New Braunfels, Texas CBSA. The EPA requested that Texas submit by May 11, 2018, any additional information the state wanted the EPA to consider in making final designation decisions for the area. Although not required by section 107(d)(2)(B) of the CAA, the EPA also provided a 30-day public comment period specific to this area (83 FR 13719; March 30, 2018). The comment period closed on April 30, 2018.

On April 30, 2018, the EPA designated all remaining undesignated areas except the eight counties in the San Antonio area (83 FR 25776; June 4, 2018).

This action designating the eight counties in the San Antonio area completes the initial designations for the 2015 ozone NAAQS. The ADDRESSES section earlier in this preamble provides detail on where to find the information supporting this designation action and the prior two actions.

#### **VII. What air quality data has the EPA used to designate the counties in the San Antonio-New Braunfels, Texas CBSA for the 2015 ozone NAAQS?**

The final ozone designations for the counties in the San Antonio-New

Nevada are equivalent to counties for administrative purposes. In addition, Alaska’s Unorganized Borough is divided into 10 census areas that are statistically equivalent to counties.

<sup>2</sup> This view was confirmed in *Catawba County v. EPA*, 571 F.3d 20 (D.C. Cir. 2009).

Braunfels, Texas CBSA are based on air quality monitoring data from the 3 most recent years of certified data, which are 2015–2017. Under 40 CFR 58.16, states are required to report all monitored ozone air quality data and associated quality assurance data within 90 days after the end of each quarterly reporting period, and under 40 CFR part 58.15(a)(2) states are required to submit annual summary reports and a data certification letter to the EPA by May 1 for ozone air quality data collected in the previous calendar year. On March 19, 2018, when the EPA notified Texas of the EPA’s intended designations for the San Antonio area, the most recent certification obligation was for air quality data from 2016. On May 1, 2018, Texas submitted certified air quality monitoring data for 2017. The violating

monitors for the 2015–2017 period are the same monitors that showed violations for the 2014–2016 period.

**VIII. What are the ozone air quality classifications?**

In accordance with CAA section 181(a)(1), each area designated as nonattainment for the ozone NAAQS is classified by operation of law at the same time as the area is designated by the EPA. Under subpart D of title I of the CAA, state planning and emissions control requirements for ozone are determined, in part, by a nonattainment area’s classification. The ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area’s “design value,” which represents air quality in the area for the most recent 3 years).<sup>5</sup>

The five classification categories are Marginal, Moderate, Serious, Severe and Extreme. Nonattainment areas with a “lower” classification have ozone levels that are closer to the standard than areas with a “higher” classification. Areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. On March 9, 2018 (83 FR 10376), the EPA published the Classifications Rule that establishes the ozone level threshold for each classification for the 2015 ozone NAAQS. Each nonattainment area’s design value, based on the most recent 3 years of certified air quality monitoring data, is used to establish the classification for the area. See Table 1.

TABLE 1—CLASSIFICATION THRESHOLDS FOR THE 2015 OZONE NAAQS (0.070 ppm)

Nonattainment area classification		8-Hour ozone design value (ppm) <sup>a</sup>
Marginal	from	0.071
	up to <sup>b</sup>	0.081
Moderate	from	0.081
	up to <sup>b</sup>	0.093
Serious	from	0.093
	up to <sup>b</sup>	0.105
Severe-15	from	0.105
	up to <sup>b</sup>	0.111
Severe-17	from	0.111
	up to <sup>b</sup>	0.163
Extreme	equal to or above	0.163

<sup>a</sup> parts per million.  
<sup>b</sup> but not including.

The most recent 3 years of certified air quality monitoring data for Bexar County, Texas are from the period 2015–2017. The ozone design value is 0.074 ppm. Therefore, in accordance with Table 1 above, the San Antonio, Texas nonattainment area is classified by operation of law as a Marginal area for the 2015 ozone NAAQS. The regulatory table for Texas included at the end of this action provides the classification for the nonattainment area.

**IX. Where can I find information forming the basis for this rule and exchanges between the EPA and the state?**

Information providing the basis for this action is provided in the docket for this rulemaking. The applicable EPA guidance memoranda and copies of correspondence regarding this process between the EPA and the state and other parties are also available for review at

the EPA Docket Center listed above in the addresses section of this document, and on the EPA’s ozone designation website at <https://www.epa.gov/ozone-designations>. State-specific information is also available from the EPA Region 6 office at the address at the beginning of this Preamble.

**X. Environmental Justice Concerns**

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment or unclassifiable. This final action addresses designation determinations for eight counties in Texas for the 2015 ozone NAAQS. Seven counties are being designated as attainment/unclassifiable and one county is being designated as nonattainment. In addition, the nonattainment area is being classified as Marginal according to the severity of its ozone air quality problem. Area designations address environmental

justice concerns by ensuring that the public is properly informed about the air quality in an area. In locations where air quality does not meet the NAAQS, the CAA requires relevant state authorities to initiate appropriate air quality management actions to ensure that all those residing, working, attending school or otherwise present in those areas are protected, regardless of minority and economic status.

**XI. Statutory and Executive Order Reviews**

*A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is exempt from review by the Office of Management and Budget because it responds to the CAA requirement to promulgate air quality designations after promulgation of a new or revised NAAQS.

<sup>5</sup> The air quality design value for the 8-hour ozone NAAQS is the 3-year average of the annual

4th highest daily maximum 8-hour average ozone concentration. See 40 CFR part 50, Appendix U.

*B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because actions such as air quality designations after promulgating a new revised NAAQS are exempt from review under Executive Order 12866.

*C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA. This action fulfills the non-discretionary duty for the EPA to promulgate air quality designations after promulgation of a new or revised NAAQS and does not contain any information collection activities.

*D. Regulatory Flexibility Act (RFA)*

This designation action under CAA section 107(d) is not subject to the RFA. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. Section 107(d)(2)(B) of the CAA explicitly provides that designations are exempt from the notice-and-comment provisions of the APA. In addition, designations under CAA section 107(d) are not among the list of actions that are subject to the notice-and-comment rulemaking requirements of CAA section 307(d).

*E. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538 and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states or on the distribution of power and responsibilities among the various levels of government. The division of responsibility between the federal government and the states for purposes of implementing the NAAQS is established under the CAA.

*G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications. It will neither impose substantial direct compliance costs on federally recognized tribal governments, nor preempt tribal law. There are no tribes affected by this action.

*H. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

The EPA interprets Executive Order 13045 as applying to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

The EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The documentation for this determination is contained in Section X of this preamble, “Environmental Justice Concerns.”

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the U.S. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*M. Judicial Review*

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the U.S. Court of Appeals for the appropriate circuit by September 24, 2018. Under section 307(b)(2) of the Act, the requirements of this final action may not be challenged later in civil or criminal proceedings for enforcement.

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 17, 2018.

**Andrew R. Wheeler,**  
*Acting Administrator.*

For the reasons set forth in the preamble, 40 CFR part 81 is amended as follows:

**PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

■ 1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

**Subpart C—Section 107 Attainment Status Designations**

■ 2. In § 81.344, the table titled “Texas—2015 8-Hour Ozone NAAQS (Primary and Secondary)” is amended by:

- a. Adding an entry for San Antonio, TX before the entry for Rest of State;
- b. Adding an entry for Atascosa County before the entry for Austin County;
- c. Adding an entry for Bandera County before the entry for Bastrop County;
- d. Adding an entry for Comal County before the entry for Comanche County;
- e. Adding an entry for Guadalupe County before the entry for Hale County;
- f. Adding an entry for Kendall County before the entry for Kenedy County;
- g. Adding an entry for Medina County before the entry for Menard County; and
- h. Adding an entry for Wilson County before the entry for Winkler County.

The additions read as follows:

**§ 81.344 Texas.**

\* \* \* \* \*

TEXAS—2015 8-HOUR OZONE NAAQS  
 [Primary and Secondary]

Designated area <sup>1</sup>	Designation		Classification	
	Date <sup>2</sup>	Type	Date <sup>2</sup>	Type
San Antonio, TX ..... Bexar County.	9/24/2018	Nonattainment ..	9/24/2018	Marginal.
Rest of State:				
Atascosa County .....	9/24/2018	Attainment/ Unclassifiable.		
Bandera County .....	9/24/2018	Attainment/ Unclassifiable.		
Comal County .....	9/24/2018	Attainment/ Unclassifiable.		
Guadalupe County .....	9/24/2018	Attainment/ Unclassifiable.		
Kendall County .....	9/24/2018	Attainment/ Unclassifiable.		
Medina County .....	9/24/2018	Attainment/ Unclassifiable.		
Wilson County .....	9/24/2018	Attainment/ Unclassifiable.		

<sup>1</sup> Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.  
<sup>2</sup> This date is August 3, 2018, unless otherwise noted.

[FR Doc. 2018-15919 Filed 7-24-18; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA-HQ-OPP-2017-0226; FRL-9979-81]

**Florasulam; Pesticide Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).  
**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of florasulam in or on teff forage, teff grain, teff hay, and teff straw. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective July 25, 2018. Objections and requests for hearings must be received on or before September 24, 2018, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2017-0226, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the

Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; main telephone number: (703) 305-7090; email address: [RDFRNotices@epa.gov](mailto:RDFRNotices@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following