requirements discussed above might not apply. However, EPA is taking this approach under consideration; it is not today proposing this approach.

List of Subjects in 40 CFR Part 81

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

Authority: 42 U.S.C. 7401–7671q.

Dated: August 25, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 97–23235 Filed 8–29–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TX–89–1–7356, FRL–5885–6]

Clean Air Act Reclassification, Texas; Dallas/Fort Worth Nonattainment Area; Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA has determined that the Dallas/Fort Worth (DFW), Texas, moderate ozone nonattainment area has not attained the one-hour ozone National Ambient Air Quality Standard (NAAQS) by the November 15, 1996, Clean Air Act (the Act) mandated attainment date for moderate ozone nonattainment areas. The proposed determination is based on EPA's review of monitored air quality data for compliance with the one-hour ozone NAAQS. If EPA takes final action on the determination as proposed, the Dallas/Fort Worth ozone nonattainment area will be reclassified by operation of law as a serious nonattainment area. The intended effect of such a reclassification would be to aid in ensuring the attainment of the NAAQS for ozone and allow the State additional time to submit a revised State Implementation Plan (SIP) to reach attainment of the one-hour ozone NAAQS.

DATES: Comments on this proposal must be received in writing by October 2, 1997.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the State ozone air quality monitoring data and EPA policy concerning attainment findings are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following locations:

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Mr. Kurt Sonderman, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, telephone (214) 665–7205.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements and EPA Actions Concerning Designation and Classifications

Under section 107(d)(1)(C) of the Act, each ozone area designated nonattainment for the one-hour ozone NAAQS prior to enactment of the 1990 Amendments, such as the Dallas/Fort Worth area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 181(a) of the Act, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe,'' or ''extreme,'' depending on the severity of the area's air quality problem. Ozone nonattainment areas with design values between 0.138 and 0.16 parts per million (ppm), such as the Dallas/Fort Worth area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to show progress towards attainment, and attainment of the ozone NAAQS as expeditiously as practicable but no later than November 15, 1996. Moderate area SIP requirements are found primarily in section 182(b) of the Act.

B. Reclassification to Serious

The EPA has the responsibility, pursuant to section 181(b)(2)(A) of the Act, of determining, within six months of the applicable attainment date (including any extension of that date) whether an ozone nonattainment area has attained the ozone NAAQS. Under section 181(b)(2)(A) of the Act, if EPA finds that a moderate area has not attained the ozone NAAQS, it is reclassified by operation of law to the higher of the next higher classification or to the classification applicable to the area's design value at the time of the finding. Pursuant to section 182(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying areas which failed to attain the standard and therefore must be reclassified by operation of law.

The one-hour ozone NAAQS is 0.12 ppm, not to be exceeded on average more than one day per year over any three year period. See 40 CFR section 50.9 and 40 CFR part 50, Appendix H. The EPA makes attainment determinations for ozone nonattainment areas using the most recently available, quality-assured air quality data covering the three-year period up to and including the attainment date. The EPA has determined that the Dallas/Fort Worth area's air quality has not met the moderate area attainment deadline of November 15, 1996, based upon all 1994, 1995, and 1996 (through November 15) quality-assured air quality data available to the Agency.

Table 1 lists the three-year average number of days over the one-hour ozone standard at each State and Local Air Monitoring Stations/National Air Monitoring Stations (SLAMS/NAMS) monitoring site in the Dallas/Fort Worth metropolitan area for the period 1994 through 1996 and each monitor's design value for that period. A complete listing of the ozone exceedances at each monitor as well as EPA's calculations of the design values can be found in the docket file.

TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCES DAYS PER YEAR IN THE DALLAS/FORT WORTH AREA [1994–1996]

Site	AIRS ID number	Number of days over the standard (1994–1996)	Average number of exceedance days per year	Site design value (PPM)
Frisco	48–085–0005	4	1.3	0.126
Nuestra Drive (Galleria)	48–113–0045	7	2.3	0.134
Hinton Street	48–113–0069	1	0.3	0.121
Denton County Airport	48–121–0033	12	4.0	0.139
Plano Parkway/South Colony	48–121–0054	5	1.7	0.127
Meacham Field	48–439–1002	4	1.3	0.126
Keller	48–439–2003	12	4.0	0.139
Red Bird Airport [1]	48–113–0087	2	0.7	0.118

[1] The Red Bird Airport was activated in 1995. The design value is the third highest reading based on two years of data.

As can be seen from Table 1, Average Number of Ozone Exceedances, DFW, six of the eight monitoring sites have averaged more than one exceedance day per year in the 1994–1996 period. Therefore, EPA has determined that the Dallas/Fort Worth metropolitan area did not attain the one-hour ozone NAAQS by the statutory deadline for moderate areas of November 15, 1996.

Additionally, as shown in Table 2, 1996 Ozone Exceedances, DFW, four monitors in the Dallas/Fort Worth area recorded two or more exceedances in 1996. Accordingly, the area would not qualify for a one-year extension due to the multiple exceedances.

TABLE 2.—OZONE EXCEEDANCES IN DALLAS/FORT WORTH AREA—1996

Site	AIRS ID Number	Site type	Date	PPM
Denton County Airport	48–121–0033	SLAMS	July 8, 1996	0.131
Denton County Airport	48–121–0033	SLAMS	September 6, 1996	0.139
Meacham Field	48–439–1002	SLAMS	July 3, 1996	0.127
Meacham Field	48–439–1002	SLAMS	July 8, 1996	0.126
Keller	48–439–2003	SLAMS	July 8, 1996	0.131
Keller	48–439–2003	SLAMS	September 6, 1996	0.133
Red Bird Airport	48–113–0087	SLAMS	June 3, 1996	0.135
Red Bird Airport	48–113–0087	SLAMS	July 3, 1996	0.144

The EPA also believes that the appropriate reclassification of the area is too serious. Section 181(b)(2) requires the area to be reclassified to the higher of the next higher classification or the classification appropriate to the design value at the time of the nonattainment finding. The next highest classification for the Dallas/Fort Worth area is serious. Based on the design value calculated using data from the SLAMS/NAMS network, the area's design value is 0.139 ppm. The area's design value is calculated in accordance with 40 CFR part 81, Air Quality Designations and Classifications; Final Rule, 56 FR 56697 (November 6, 1991). See also the June 18, 1990, Memorandum from William G. Laxton, Director of the Technical Support Division, Office of Air Quality Planning and Standards for the method of calculating ozone design values.

C. SIP Requirements for Serious Ozone Nonattainment Areas

Under section 181(a)(1) of the Act, the attainment deadline for moderate ozone nonattainment areas reclassified to serious under section 181(b)(2) will be completed as expeditiously as possible, but no later than November 15, 1999. Under section 182(i), these reclassified areas are required to submit SIP revisions addressing the serious area requirements for the one-hour ozone NAAQS in section 182(c). Section 182(i) further provides that the Administrator may adjust the statutory schedules for submittal of these SIP revisions. Accordingly, EPA is exercising this authority to require submittal of the serious area SIP revisions no later than 12 months from the effective date of the area's reclassification. The EPA believes that a 12 months schedule is appropriate because the attainment date for serious areas, November 15, 1999, is little more than two years away and the State will need to expedite adoption and implementation of controls to meet that deadline.

Under section 182(c), the requirements for serious ozone nonattainment areas include, but are not limited to, the following: (1) Attainment and reasonable further progress demonstrations, (2) an enhanced vehicle inspection and maintenance program, (3) clean-fuel vehicle programs, (4) a 50 ton-per-year major source threshold, (5) more stringent new source review requirements, (6) an enhanced monitoring program, and (7) contingency provisions.

The EPA has issued a ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' that sets forth the Agency's preliminary views on how it will act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). This guidance should be followed in the development of the serious ozone nonattainment area SIP revision.

The EPA has recently promulgated an eight-hour ozone standard (62 FR 38856, July 18, 1997). In order to facilitate the transition from the one-hour to the eight-hour NAAQS, EPA may issue additional guidance to assist states in meeting the serious area requirements.

II. Proposed Action

The EPA has evaluated this action for consistency with the Act, EPA regulations, and EPA policy. The EPA has determined that a reclassification of the Dallas/Fort Worth ozone nonattainment area from moderate to

serious is necessary to satisfy the requirements of the Act and the policy set forth in the General Preamble. The EPA is proposing today to reclassify the Dallas/Fort Worth ozone nonattainment area to serious.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's proposal is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to Office of Management and Budget review, economic analysis, and the requirements of the E.O. See E.O. 12866, section 6(a)(3). The E.O. defines, in section 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA has determined that the finding of failure to attain proposed today, as well as the establishment of SIP submittal schedules resulting from a bump-up, would result in none of the effects identified in E.O. 12866 section 3(f). Under section 181(b)(2) of the Act, findings of failure to attain are based upon air quality considerations, and reclassifications must occur by operation of law in light of certain air quality conditions. These findings do not, in-and-of-themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local, or tribal governments or communities. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. Sections 603 and 604 of 5 U.S.C. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

A finding of failure to attain (and the consequent reclassification by operation of law of the nonattainment area) under section 181(b)(2) of the Act, and the establishment of a SIP submittal schedule for a reclassified area, do not, in-and-of-themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply proposes to make a factual determination and to establish a schedule to require States to submit SIP revisions, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any one year. A ''Federal mandate'' is defined, under section 101 of UMRA, as a provision that ''would impose an enforceable duty upon the private sector or State, local, or tribal governments,'' with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments.'' Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA section] 202'', EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

Sections 202, 204, and 205 of UMRA do not apply to today's action because the proposed factual determination that the Dallas/Fort Worth area failed to reach attainment does not, in-and-of-itself, constitute a Federal mandate because it does not impose an enforceable duty on any entity. Although the establishment of a SIP submission schedule may impose such a duty on the State, this requirement merely establishes due dates, does not set out any requirements not otherwise already present, and thus cannot be considered to cost $100 million or more. Finally, section 203 of UMRA does not apply to today's action because the regulatory requirements proposed today—the SIP submittal schedule—affect only the Dallas/Fort Worth nonattainment area, which is not a small government under UMRA.

D. Rule vs. Adjudication

It should be noted that each of the three administrative requirements described above—E.O. 12866, the Regulatory Flexibility Act, and UMRA—apply only with respect to agency actions that fall into the category of ''rules,'' as defined under those provisions or under the Administrative Procedures Act, 5 U.S.C. 551 *et. seq.*, E.O. 12866 section 3 (d)–(e); Regulatory Flexibility Act, 5 U.S.C. 603(a), 601(2); Unfunded Mandates Reform Act, sections 202–205, 421. The EPA is considering the possibility that today's action, to the extent it consists of a determination that the Dallas/Fort Worth area failed to attain the ozone NAAQS as of the end of 1996, might not be considered a ''rule'' as defined under these provisions, and instead might be considered an informal adjudication. The basis for this distinction could be that today's action constitutes a specific

factual determination applicable only to the area in question, based on preexisting facts. Under these circumstances, the administrative requirements discussed above might not apply. However, EPA is taking this approach under consideration, it is not today proposing this approach.

List of Subjects in 40 CFR Part 81

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

Dated: August 25, 1997.

Jerry Clifford,

Acting Regional Administrator.

[FR Doc. 97–23236 Filed 8–29–97; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 97–296]

Preemption of State and Local Zoning and Land Use Restrictions on the Siting, Placement and Construction of Broadcast Transmission Facilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission issues this Notice of Proposed Rule Making to consider whether and in what circumstances to preempt certain state and local zoning and land use ordinances which present an obstacle to the rapid implementation of digital television (''DTV'') service. Having found that the accelerated roll-out is essential to the success of over-the-air DTV, the Commission set out an accelerated construction schedule for DTV facilities. To the extent that state and local restrictions stand as an obstacle to the achievement of its purposes the Commission has the authority to preempt state or local law. In this Notice of Proposed Rule Making, the Commission seeks comment on whether and in what circumstances it should preempt state or local action or inaction that interferes with the rapid roll-out of DTV.

DATES: Comments are due on or before October 30, 1997 and reply comments are due on or before December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Keith Larson, Assistant Bureau Chief for Engineering or Susanna Zwerling, Policy and Rules Division, Mass Media Bureau (202) 418–2140.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, FCC 97–296 adopted August 18, 1997 and released August 19, 1997. The full text of this Commission Notice is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 239), 1919 M Street NW, Washington, DC. The complete text of this Notice may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Notice

I. Introduction

1. The Commission is undertaking this rule making to consider whether and in what circumstances to preempt certain state and local zoning and land use ordinances that present obstacles to the rapid implementation of DTV. Such ordinances may inhibit the resiting of antennas made necessary by the implementation of DTV. This issue was brought before the Commission in a ''Petition for Further Notice of Proposed Rule Making'' filed jointly by the National Association of Broadcasters and the Association for Maximum Service Television (''Petitioners'').[1]

II. Background

2. In its *Fifth Report and Order* in the DTV proceeding, the Commission adopted an accelerated schedule for construction of DTV transmission facilities. The construction schedule requires affiliates of the top four networks to be on the air with digital signals by May 1, 1999 in the top ten markets and by November 1, 1999 in markets 11–30. All other commercial stations must construct their DTV facilities by May 1, 2002, and noncommercial stations by May 1, 2003. Subject to biennial review and statutory exceptions, all stations are to return their analog spectrum by 2006.[2]

3. The accelerated DTV transition schedule will require extensive tower modification and construction. Petitioners state that local regulation presents obstacles to this construction schedule in that the levels of review required in the administration of such restrictions can last several months.

4. To facilitate compliance with the DTV construction schedule, Petitioners ask the Commission to adopt a rule allowing the Commission to preempt state and local zoning and other land use regulations to the extent they unreasonably delay the DTV roll-out and other ongoing broadcast transmission facilities construction. The proposed rule provides specific time limits for state and local government action in response to requests for approval of the placement, construction or modification of broadcast transmission facilities. The Petitioners' proposed rule would require action within 21 days with respect to modifications of existing broadcast transmission facilities where no change in location or height is proposed; within 30 days with respect to the relocation of an existing broadcast transmission facility from a currently approved location to another location within 300 feet, or the consolidation of two or more broadcast transmission facilities, or the increase in the height of an existing tower; and within 45 days for all other requests. Failure to act within these time limits would cause the request to be deemed granted. The Petitioners propose that a broadcaster receiving an adverse decision could, within 30 days of the decision, petition the Commission for a declaratory ruling on which the Commission, in turn, would have 30 days in which to act. The Petitioners' proposed rule would remove from local consideration (1) regulations based on the environmental or health effects of radio frequency (''RF'') emissions; and (2) interference with other telecommunications signals and consumer electronics devices to the extent that the facility complies with Commission regulations. It would also remove from local consideration regulations concerning tower marking and lighting provided that the facility complies with applicable Commission or Federal Aviation Administration regulations. The Petitioners' proposed rule would preempt all state and local regulations that impair the ability of licensed broadcasters construct or modify their facilities unless the state or local authority can demonstrate that the regulation is related to health or safety objectives.

III. Discussion

5. In its *Fifth Report and Order* the Commission set out the rationale for an accelerated roll-out of DTV. The Commission found that first, absent a speedy roll-out, other DTV services might achieve levels of penetration that

[1] This petition was filed in the Commission's Digital Television proceeding *Fifth Report and Order* in MM Docket No. 87–268, FCC 97–116 (April 22, 1997) (*Fifth Report and Order*), 62 FR 26966 (May 16, 1997). The Commission will, however, treat the Petition as one filed pursuant to 47 CFR 1.401 seeking the institution of a new rule making proceeding.

[2] *Fifth Report and Order, supra* at ¶¶ 99, 100. *See Also* Balanced Budget Act of 1997 (''BBA''), Pub. L. 105–33, 111 Stat. 251 (1997) (codified at 47 U.S.C. 309(j)(14) (A)–(B)) (establishing statutory target date for return of the analog spectrum and setting out exceptions to that deadline).