CAA) ¹. Thus, in determining the appropriate boundaries for the nonattainment area finalized in this action, the EPA has considered not only the area where the violations of the ozone NAAQS are occurring, but nearby areas which significantly contribute to such violations.

Response to Public Comments

In the April 7, 1995, proposal FR action, the EPA requested public comments on all aspects of the proposal, including the appropriateness of the proposed designation and the scope of the proposed boundaries. The EPA received no comments on the proposal FR action.

Final Action

As noted above, pursuant to section 107(d)(3) of the CAA, the EPA is authorized to initiate the redesignation of areas as nonattainment for ozone. Based on the ozone air quality monitoring data for the Sunland Park monitoring station, the EPA notified the Governor of New Mexico on December 16, 1994, that the Sunland Park area should be redesignated from unclassifiable/attainment to nonattainment for the ozone NAAQS. Ozone monitoring began in Sunland Park on June 15, 1992. Seven measured exceedances of the ozone NAAQS have been recorded at the monitoring site, ranging from a low of .126 parts per million (ppm) to a high of .140 ppm. The seven exceedances represent a violation of the ozone NAAQS (see 40 Code of Federal Regulations (CFR) 50.9). Since less than three years of data have been collected at the Sunland Park monitoring site, the EPA design value (used to determine ozone attainment status) for the site is the third highest ozone value recorded-.136 ppm. Therefore, the Sunland Park ozone nonattainment area is classified as a marginal ozone nonattainment area according to the classification scheme set forth in section 181 of the CAA. Due to the marginal classification, the attainment date for the Sunland Park ozone nonattainment area will be three years from the effective date of this Federal Register final action establishing the nonattainment designation and classification.

In response to the EPA's December 16, 1994, letter, on January 30, 1995, the Governor of New Mexico concurred with the EPA that a small area of

southern Dona Ana County, including Sunland Park, be redesignated as nonattainment for the ozone NAAQS. However, the Governor did not concur with the proposed nonattainment boundaries in one respect, proposing an alternate western boundary for the nonattainment area. Based on the information provided by the Governor, including monitoring data, the EPA believes that the nonattainment boundaries submitted by the Governor are appropriate. The technical information supporting the redesignation request and the boundary selections are available for public review at the addresses indicated above.

Significance of Final Action for the Sunland Park Area, New Mexico

Within 24 months after the effective date of this final action on the nonattainment redesignation, New Mexico must submit an implementation plan for the Sunland Park ozone nonattainment area meeting the requirements of part D, title I of the CAA (see section 182(a) of the CAA).

The CAA provides that the plan for the area must contain, among other things, the following items:

1. A comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3) of the CAA, in accordance with guidance provided by the EPA. The pollutants inventoried must include volatile organic compounds (VOC), nitrogen oxides (NO_X) and carbon monoxide. No later than the end of each three year period after submission of the initial inventory, until the area is redesignated to attainment, the State must submit a revised inventory meeting all EPA requirements (see section 182(a)(1) of the CAA).

2. Requirements that the owner or operator of each stationary source of NOx or VOC provide the State with a statement, in such form as the EPA may prescribe, for classes or categories of sources, showing the actual emissions of NOx and VOC from that source. The first such statement must be submitted to the State within three years after the effective date of this final action establishing the nonattainment designation. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. The State may waive the emission statement requirement for any class or category of stationary sources which emits less than 25 tons per year of VOC or NOx, if the State, in its initial and periodic

emission inventories, provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the EPA, or other methods acceptable to the EPA (see section 182(a)(3)(B) of the CAA).

3. A revised nonattainment new source review permitting program meeting the requirements of sections 172(c)(5) and 173 of the CAA, including the requirement that the ratio of total emission reductions of VOC to total increased emissions of such air pollutant shall be at least 1.1 to 1 (see section 182(a)(4) of the CAA).

4. Revised conformity rules (Regulations 20 NMAC 2.98 and 20 NMAC 2.99) if necessary (see sections 176 and 182 of the CAA).

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-forprofit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to nonattainment under section 107(d)(3)of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the planning status of a geographical area and does not, in itself, impose any regulatory requirements on sources. To the extent that the area must adopt new regulations, based on its nonattainment status, the EPA will review, as appropriate, the effect of those actions on small entities at the time the State submits those regulations. I certify that approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 11, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

¹ The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.