Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the areas design value (as of the attainment date), whether the area attained the standard by the date.

This provision further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards (bumped-up):

Except for any severe or extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) of this section to the higher of—

(i) The next higher classification for the area,

or

(ii) The classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

Finally, subparagraph (B) of section 181(b)(2) mandates that the Administrator publish a document in the **Federal Register** identifying each area that failed to attain the NAAQS.

As quoted above, section 181(b)(2)(A) states that the determination of attainment status be based on the area's ''design value''. EPA interprets this provision generally to refer to EPA's methodology for determining attainment status. See generally, H Comm. Rep. 101–490 pp. 197, 232 (1990) (House Energy and Commerce Committee Report).

For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See 57 FR 13506 (April 16, 1992) (the ''General Preamble''). Under these requirements, for marginal ozone nonattainment areas, EPA reviewed air quality during the years 1991–1993 to determine whether the area met its attainment date.

II. Summary of Action

A. Determinations of Attainment

By this action, EPA is issuing a final rule that determinations under section 181(b)(2)(A) of whether an area attained the ozone NAAQS by its attainment date will be made on the basis of air quality monitoring data for the three-year period up to and including the attainment date. The air quality data relied on for these determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

If this rule takes effect, future EPA determinations of whether an ozone nonattainment area attained the NAAQS by its attainment date will be made solely by reference to AIRS data. EPA would not be required to publish a **Federal Register** document concerning areas that attained the ozone NAAQS. EPA would continue to be required to publish a **Federal Register** document for areas that failed to attain the ozone NAAQS and that are subject to reclassification. However, this notice would be a final action not subject to notice and comment under the Administrative Procedures Act, 5 U.S.C. 553(b). Instead, EPA will invoke the ''good cause'' exemption from notice-and-comment rulemaking, under 5 U.S.C. 553(b)(B). The ''good cause'' exemption applies when the agency ''for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' This exemption applies to merely ministerial actions, and EPA takes the position that a reclassification based on air quality data amounts to a ministerial action.

The system described above would fulfill the requirements of section 181(b)(2) of the Act. EPA intends to undertake the same system for making attainment determinations with respect to areas that are nonattainment for carbon monoxide (CO) under section 186(b)(2). By this action, EPA is issuing a final rule to this effect, which will be effective March 20, 1995 unless notice is received by February 16, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

B. Region III Nonattainment Areas

EPA is today determining that the Hampton Roads nonattainment area in Virginia failed to demonstrate attainment by its attainment date of November 15, 1993. The Hampton Roads ozone nonattainment area is comprised of Chesapeake, Hampton, James City County, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and York County in Virginia. This determination is based on air quality monitors revealing exceedances of the ozone NAAQS during the three year period 1991–1993.

In order to attain the NAAQS for ozone, each monitoring site in a nonattainment area must average no more than 1.0 expected exceedance of the standard (0.12 parts per million (ppm) ozone) per year in a three year period. The number of expected exceedances is calculated by adjusting the number of actual monitored exceedances to account for missing data. Monitors in the Hampton Roads area in Virginia recorded eight exceedances of the ozone NAAQS in the three year period 1991 to 1993. In the Hampton Roads area, the Suffolk monitor (No. 51–800–0004) recorded five exceedances in that time period. Consequently, the average annual expected exceedances for the Hampton Roads area was 1.7 for the 1991–1993 period. The ozone data measured during that same period for this area indicates a design value of 0.131 parts per million (ppm).

Monitoring data in the Hampton Roads area for the 1992–1994 period indicates that the expected number of exceedances remains 1.7 and the design value remains 0.131 ppm ozone. Therefore, the area did not attain the NAAQS for ozone by November 15, 1993 and continues to violate the ozone standard. Pursuant to section 181 of the Act, EPA is required to reclassify (bump-up) the area to moderate.

This document fulfills EPA's obligations under section 181(b)(2) to determine whether the Hampton Roads, Virginia marginal ozone nonattainment area attained the ozone NAAQS by their attainment date, and to publish its determination in the **Federal Register**.

Under Section 182(i) of the Act, reclassifying the Hampton Roads, Virginia area to moderate means that the Commonwealth of Virginia will be required to submit State Implementation Plan (SIP) revisions for this area appropriate for moderate areas under section 182(b). Section 182(i) further provides that deadlines provided under the requirements of section 182(b) remain applicable to these areas, except that the Administrator (or the Administrator's delegate) ''may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among required submissions.'' Accordingly, reclassification to moderate results in an attainment date for the Hampton Roads area of November 15, 1996 under section 181(a)(1) (table 1).

However, EPA is exercising its authority to adjust the SIP submission schedule for the moderate area controls. All SIP submissions required under section 182(b) must be submitted by November 15, 1995. All required controls and emission reductions must be implemented or achieved on a schedule that facilitates attainment by November 15, 1996 (the attainment date for marginal areas). This submittal date will assure consistency in SIP submittal