

entities. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether ozone nonattainment areas attained the NAAQS. The Office of Management and Budget has exempted this action from

review under Executive Order 12866. The Regional Administrator's decision to reclassify the Hampton Roads ozone nonattainment area from marginal to moderate is based on whether it has attained the NAAQS by its attainment date, pursuant to section 181 of the Act.

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

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: January 5, 1995.

**Peter H. Kostmayer**,  
*Regional Administrator.*

40 CFR part 81 is amended as follows:

**PART 81—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401-7671q.

2. In § 81.347 the "Virginia-Ozone" table is amended by revising the entry for "Norfolk-Virginia Beach-Newport News (Hampton Roads) Area" and all of the subentries to read as follows:

**§ 81.347 Virginia.**

\* \* \* \* \*

VIRGINIA—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Norfolk-Virginia Beach-Newport News (Hampton Roads) Area:				
Chesapeake .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Hampton .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
James City County .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Newport News .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Norfolk .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Poquoson .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Portsmouth .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Suffolk .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Virginia Beach .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
Williamsburg .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
York County .....	1/6/92	Nonattainment .....	Mar. 20, 1995 <sup>2</sup> .....	Moderate.
* .....	*	*	*	*

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

<sup>2</sup> However, the effective date is November 15, 1990 for the purposes of determining the scope of a "covered area" under section 211(k)(10)(D), opt-in under section 211(k)(6), and the baseline determination of the 15% reduction in volatile organic compounds under section 182(b)(1).

[FR Doc. 95-1008 Filed 1-13-95; 8:45 am]  
BILLING CODE 6560-50-P

**40 CFR Parts 52 and 81**

[TN 132-1-6787; FRL-5133-7]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee**

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

**ACTION:** Final rule.

**SUMMARY:** On November 12, 1992, the State of Tennessee through the Memphis and Shelby County Health Department (MSCHD), submitted a maintenance plan and a request to redesignate the Memphis and Shelby County area (classified as a marginal nonattainment area) from nonattainment to attainment for ozone (O<sub>3</sub>). The O<sub>3</sub>

nonattainment area specifically consists of Shelby County. Under the Clean Air Act as amended in 1990 (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA for redesignations. In this action, EPA is approving the State of Tennessee's submittal because it meets the maintenance plan and redesignation requirements. The approved maintenance plan will become a federally enforceable part of the SIP for the Memphis and Shelby County area.

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, the EPA notified the State of Tennessee that the EPA had made a finding of failure to submit required programs for the nonattainment area. EPA's redesignation of the Memphis and Shelby County area to attainment abrogates those requirements for this area.

**EFFECTIVE DATE:** This final rule is effective February 16, 1995.

**ADDRESSES:** Copies of the redesignation request and the State of Tennessee's submittal are available for public review during normal business hours at the following locations. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA 30365.

Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105.

**FOR FURTHER INFORMATION CONTACT:**

Karen Borel of the EPA Region 4 Air Programs Branch at (404) 347-3555, ext. 4197 and at the Region 4 address.

**SUPPLEMENTARY INFORMATION:**

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1), in conjunction with the Governor of Tennessee, EPA designated the Memphis and Shelby County area as nonattainment because the area violated the O<sub>3</sub> standard during the period from 1987 through 1989. Furthermore, upon designation, the Memphis and Shelby County area was classified as marginal under section 181(a)(1). (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.343.)

The Memphis and Shelby County area more recently has ambient monitoring data that show no violations of the O<sub>3</sub> National Ambient Air Quality Standards (NAAQS), during the period from 1990 through 1992. Therefore, in an effort to comply with the CAA and to ensure continued attainment of the NAAQS, on November 12, 1992, the State of Tennessee submitted for parallel processing an O<sub>3</sub> maintenance SIP for the Memphis and Shelby County area and requested redesignation of the area to attainment with respect to the O<sub>3</sub> NAAQS. On May 14, 1993, the MSCHD submitted evidence that a public hearing was held on the requests to redesignate Memphis and Shelby County from nonattainment of the NAAQS for O<sub>3</sub> to attainment of the NAAQS for this pollutant. In addition, there have been no violations reported for the 1993 O<sub>3</sub> season. The revised request for redesignation submittal was approved by the TN Air Pollution Control Board on March 9, 1994. The EPA reviewed this request for revision of the federally approved SIP and found it to be in conformance with the requirements of the 1990 CAA. EPA therefore published a notice to approve the revisions without prior proposal (59 FR 39692, August 4, 1994).

In that final rulemaking, EPA advised the public that the effective date of the action was deferred for 60 days (until October 3, 1994), to provide an opportunity to submit comments. EPA announced that if such comments were received within 30 days (by September 6, 1994), the action would be withdrawn by publishing a subsequent document that would withdraw the final action. All public comments received would then be addressed in a subsequent final rule based on the 59 FR 39692 notice (August 4, 1994) serving as the proposed

rule. The EPA also announced that it would not institute a second comment period on this action. Adverse comments were received on the 59 FR 39692 notice (August 4, 1994), prior to the September 6, 1994, deadline.

Accordingly, EPA withdrew the direct final notice on October 26, 1994, (59 FR 53741) and is hereby addressing those adverse comments in this final rule.

The commenter, representing the Utah Chapter of the Sierra Club, contends that EPA should not approve the Memphis/Shelby County maintenance plan or the redesignation of the area to attainment for O<sub>3</sub>. The commenter had two specific comments.

*Comment 1:* In the first comment, the commenter states that "EPA is acting contrary to their own guidelines by accepting the acknowledged increase in NO<sub>x</sub> emissions from the baseline 1990 inventory for this area." [Nitrogen Oxides (NO<sub>x</sub>)] The commenter also believes that "EPA must at the very least firmly adhere to their guidelines for redesignation of areas to attainment and to not allow future emission inventories to exceed the attainment inventory."

*Response to Comment 1:* The Agency recognizes the legitimacy of the commenter's first concern. Prior to the publication of the August 4, 1994, **Federal Register** notice, the Agency considered this particular issue in depth. In the August 4, 1994, notice, in column one, page 39696, it is recognized that the data submitted for 1993 showed a higher level of NO<sub>x</sub> emissions than the base year. However, as also stated in that notice, the Memphis/Shelby County nonattainment area was still in attainment during 1993. All future years' NO<sub>x</sub> emissions data are below the 1993 level, therefore, continued attainment is expected. The projected 1993 emissions closely approximated actual 1993 data. The NO<sub>x</sub> levels projected for 1996 and 1999, although higher than the base year levels, are significantly lower than the 1993 levels, which, as noted previously, did not cause a violation of the standard. The projected levels for 2002 and 2004 are less than the attainment year. The Agency believes that the emissions projections demonstrate that the area will continue to maintain the O<sub>3</sub> NAAQS because this area achieved attainment primarily through Volatile Organic Compounds (VOC) controls and reductions. Further VOC projections continue to show a decrease and NO<sub>x</sub> projections show a decrease beyond 1993, a year in which the standard was attained.

*Comment 2:* In the second comment, the commenter expressed concern that "NO<sub>x</sub> emissions in particular are treated

as an insignificant issue" and that, in the assessment of how well the Tennessee proposal meets criteria four (The Air Quality Improvement must be Permanent and Enforceable), "there is no mention of NO<sub>x</sub>" and the "discussion is only of VOC emissions."

*Response to Comment 2:* EPA has not treated NO<sub>x</sub> emissions as insignificant. EPA has considered NO<sub>x</sub> emissions and their impact fully in reviewing this redesignation request. EPA believes, however, that the emissions projections for NO<sub>x</sub> and VOCs provide an adequate demonstration of maintenance in light of the fact that the Memphis/Shelby County Area continued to attain the ozone standard in 1993 notwithstanding the projected increase of NO<sub>x</sub> emissions in that year. As explained above NO<sub>x</sub> emissions are not projected to increase above 1993 levels; they are projected to decline after 1993 to levels below the 1990 baseline year.

Furthermore, although EPA did not refer to them in the earlier **Federal Register** notice, NO<sub>x</sub> reductions have occurred as a result of the implementation of the federal motor vehicle control program and I/M program in the Memphis/Shelby County Area. Fleet turnover in future years to cleaner vehicles will result in further NO<sub>x</sub> reductions. Most of the reductions that have occurred in the Memphis/Shelby County area, however, have been VOC reductions and it has been reliance primarily on VOC reductions that is responsible for attainment of the standard in this area.

In addition, EPA notes that, as described in the earlier notice regarding the Memphis redesignation, one of the contingency measures in the contingency plan is the development and implementation of NO<sub>x</sub> requirements for stationary fuel burning sources. Thus, in the event that NO<sub>x</sub> emissions presented a problem during the maintenance period that caused a violation to occur, a NO<sub>x</sub>-specific measure has already been incorporated in the contingency plan. However, it should be noted that the Memphis/Shelby County area is classified as marginal for O<sub>3</sub> attainment. The CAA does not mandate reductions of NO<sub>x</sub> in marginal nonattainment areas, only in areas classified as moderate and above. Therefore, the Agency cannot require reductions in NO<sub>x</sub> emissions as a requirement for redesignation to attainment for O<sub>3</sub> in marginal areas such as Memphis/Shelby County.

Finally, EPA notes that this action does not result in the continued postponement of reductions of NO<sub>x</sub> emissions in this country. This action concerns only the Memphis/Shelby

County area and, in any event, further NO<sub>x</sub> reductions are projected to occur even in this area.

After additional review of this proposed redesignation in light of the commenter's concerns, the Agency concludes that this area should be redesignated to attainment for ozone.

**Final Action**

In this final action, EPA is approving the Memphis and Shelby County O<sub>3</sub> maintenance plan, including the 1990 base year emission inventory, because it meets the requirements of section 175A. In addition, the EPA is redesignating the Memphis and Shelby County area to attainment for O<sub>3</sub> because the State of Tennessee has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. This action stops the sanctions and federal implementation plan clocks that were triggered for the Memphis and Shelby County area by the January 15, 1993, findings letter.

The OMB has exempted these actions from review under Executive Order 12866.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The O<sub>3</sub> SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O<sub>3</sub> NAAQS. This final redesignation should not be interpreted as authorizing the State of Tennessee to delete, alter, or rescind any of the VOC or NO<sub>x</sub> emission limitations and restrictions contained in the approved O<sub>3</sub> SIP. Changes to O<sub>3</sub> SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in a finding of nonimplementation [section 179(a) of the CAA] or in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k) of the CAA.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, 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, 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-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Redesignation of an area to attainment under section 107(d)(3)(E) of the CAA does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. The Administrator certifies that the approval of the redesignation request will not affect a substantial number of small entities.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone.

*40 CFR Part 81*

Air pollution control, National parks, Wilderness areas.

Dated: December 23, 1994.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

**Subpart RR—Tennessee**

2. Section 52.2220 is amended by adding paragraph (c)(122) to read as follows:

**§ 52.2220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(122) The maintenance plan and emission inventory for the Memphis and Shelby County Area which includes Shelby County and the City of Memphis submitted by the Tennessee Department of Environment and Conservation on November 12, 1992, and March 31, 1994, as part of the Tennessee SIP.

(i) Incorporation by reference.

(A) Amendment to the Original Submittal of Nonregulatory Amendment to State Implementation Plan for Shelby County Redesignation from Nonattainment to Attainment Classification for Ozone submitted March 31, 1994, and prepared by the Memphis and Shelby County Health Department, Pollution Control Section for the Tennessee Department of Conservation. The effective date is March 9, 1994, for the following provisions:

Section I—Requirement One—Air Quality Data Shows Area Meets NAAQS

Section IV—Requirement Four—Maintenance Plan

Attachment F:

Shelby County Emission Projections Volatile Organic Compounds (Summer Season)

Shelby County Emission Projections 1990–2004 Nitrogen Oxides (Summer Season)

(ii) Other material. None.

**PART 81—[AMENDED]**

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

**Authority:** 42 U.S.C. 7401–7671q.

2. Section 81.343, is amended by revising the attainment status designation table for ozone to read as follows:

**§ 81.343 Tennessee.**

\* \* \* \* \*

TENNESSEE—OZONE

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Nashville Area:				
Davidson County .....	.....	Nonattainment .....	.....	Moderate.
Rutherford County .....	.....	Nonattainment .....	.....	Moderate.
Sumner County .....	.....	Nonattainment .....	.....	Moderate.
Williamson County .....	.....	Nonattainment .....	.....	Moderate.
Wilson County .....	.....	Nonattainment .....	.....	Moderate.
Rest of State .....	.....	Unclassifiable/Attainment.		
Anderson County				
Bedford County				
Benton County				
Bledsoe County				
Blount County				
Bradley County				
Campbell County				
Cannon County				
Carroll County				
Carter County				
Cheatham County				
Chester County				
Claiborne County				
Clay County				
Cocke County				
Coffee County				
Crockett County				
Cumberland County				
DeKalb County				
Decatur County				
Dickson County				
Dyer County				
Fayette County				
Fentress County				
Franklin County				
Gibson County				
Giles County				
Grainger County				
Greene County				
Grundy County				
Hamblen County				
Hamilton County				
Hancock County				
Hardeman County				
Hardin County				
Hawkins County				
Haywood County				
Henderson County				
Henry County				
Hickman County				
Houston County				
Humphreys County				
Jackson County				
Jefferson County				
Johnson County				
Knox County .....	10/27/93.			

TENNESSEE—OZONE—Continued

Designated area	Designation		Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Lake County				
Lauderdale County				
Lawrence County				
Lewis County				
Lincoln County				
Loudon County				
Macon County				
Madison County				
Marion County				
Marshall County				
Maury County				
McMinn County				
McNairy County				
Meigs County				
Monroe County				
Montgomery County				
Moore County				
Morgan County				
Obion County				
Overton County				
Perry County				
Pickett County				
Polk County				
Putnam County				
Rhea County				
Roane County				
Robertson County				
Scott County				
Sequatchie County				
Sevier County				
Shelby County .....	Feb. 16, 1995.			
Smith County				
Stewart County				
Sullivan County				
Tipton County				
Trousdale County				
Unicoi County				
Union County				
Van Buren County				
Warren County				
Washington County				
Wayne County				
Weakley County				
White County				

<sup>1</sup> This date is November 15, 1990, unless otherwise noted.

\* \* \* \* \*  
 [FR Doc. 95-1007 Filed 1:13-95; 8:45 am]  
 BILLING CODE 6560-50-P

**DEPARTMENT OF THE INTERIOR**  
**Bureau of Land Management**  
**43 CFR Public Land Order 7111**  
**(AK-932-1410-00; AA-6689)**  
**Withdrawal of Public Lands for Pauloff Harbor Village Selection; Alaska**  
**AGENCY:** Bureau of Land Management, Interior.  
**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 12,610.90 acres of public lands located within the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime National Wildlife Refuge, from all forms of appropriation under the public land laws, including the mining and mineral leasing laws, pursuant to Section 22(j)(2) of the Alaska Native Claims Settlement Act. This action also reserves the lands for selection by the Sanak Corporation, the village corporation for Pauloff Harbor. This withdrawal is for a period of 120 days; however, any lands selected shall remain withdrawn by the order until they are conveyed. Any lands described herein that are not selected by the corporation will remain withdrawn as part of the Alaska Peninsula National Wildlife Refuge or

the Alaska Maritime National Wildlife Refuge, pursuant to the Alaska National Interest Lands Conservation Act, and will be subject to the terms and conditions of any withdrawal of record. **EFFECTIVE DATE:** January 17, 1995. **FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477. By virtue of the authority vested in the Secretary of the Interior by Section 22(j)(2) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1621(j)(2) (1988), it is ordered as follows:  
 1. Subject to valid existing rights, the following described public lands located within the Alaska Peninsula National Wildlife Refuge or the Alaska Maritime Wildlife Refuge, are hereby