

requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S. Ct. 1976); 42 U.S.C. 7410 (a)(2).

The OMB has exempted this action from review under Executive Order 12866.

**V. Unfunded Mandates**

Under sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under sections 110 and 182(b) of the Clean Air Act. These rules may bind State, local, and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action will impose any mandate upon the State, local, or tribal governments either as the owner or operator of a source or as a regulator, or would impose any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this direct final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and

recordkeeping requirements, Volatile organic compounds.

**Note:** Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 26, 1995.

**Jeff Zelikson,**  
*Acting Regional Administrator.*

Part 52, chapter I, title 40 of the 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 F—California**

2. Section 52.220 is amended by adding paragraph (c)(223) to read as follows:

**§ 52.220 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

(223) Revised ozone transportation control measure (TCM) for the San Joaquin Valley submitted on March 2, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Railroad Grade Separations TCM, adopted on September 14, 1994.

[FR Doc. 95-20481 Filed 8-17-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Parts 52 and 81**

[TN 141-1-6986a; FRL-5277-7]

**Clean Air Act Approval and Promulgation of Redesignation of the Rossville Area of Fayette County, Tennessee, to Attainment for Lead**

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) for the purpose of redesignating the portion of Fayette County near Rossville, Tennessee, from nonattainment to attainment status for the lead National Ambient Air Quality Standard (NAAQS).

**DATES:** This final rule is effective on October 17, 1995 unless adverse or critical comments are received by September 18, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Comments may be mailed to Kimberly Bingham at the EPA Region 4 address listed below. Copies of the material submitted by TDEC may be examined during normal business hours at the following locations:

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, Atlanta, Georgia 30365.

Tennessee Department of Environment and Conservation, Division of Air Pollution Control, 401 Church Street, L & C Annex, 9th Floor, Nashville, Tennessee 37243-1531.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Bingham, Regulatory Planning and Development Section, Air Programs Branch, Air Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is (404) 347-3555 ext. 4195.

**SUPPLEMENTARY INFORMATION:** On June 7, 1993, a portion of Fayette County, Tennessee, near Rossville, was designated nonattainment for lead. Since that time, the only source of lead emissions in the area, a facility operated by Ross Metals Inc., has permanently closed, and monitoring data from the area demonstrates that the area is attaining the NAAQS for lead. Section 107(d)(3)(E) of the Clean Air Act (CAA) permits nonattainment areas that have attained the lead NAAQS to be redesignated to attainment provided certain criteria are met. Consequently, the State of Tennessee submitted a request to redesignate the area to attainment.

Section 107(d)(3)(E) of the CAA, as amended in 1990, sets forth the requirements that must be met for a nonattainment area to be redesignated to attainment. It states that an area can be redesignated to attainment if the following conditions are met.

1. The EPA has determined that the lead NAAQS has been attained.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. The EPA has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions.

4. The State has met all applicable requirements for the area under section 110 and part D.

5. The EPA has fully approved a maintenance plan, including a

contingency plan, for the area under section 175A.

On July 1, 1992, Ross Metals Inc., the only lead source in the area, began a 30 to 90 day temporary shutdown, however the facility did not re-start its operation. The facility has gone out of business and has surrendered its state operating permit. Therefore, the source of emissions that led to the lead nonattainment designation for the Fayette County area has permanently shut down. On October 6, 1994, the State of Tennessee through TDEC submitted a request to redesignate the portion of Fayette County near Rossville from nonattainment to attainment status for lead. The public hearing was held on August 25, 1994. The State did not receive any adverse comments during the public hearing or the 30 day comment period. A letter of completeness was mailed to John Walton, Technical Secretary, Tennessee Air Pollution Control Board, from EPA on December 8, 1994, for the submittal. The State of Tennessee's redesignation request meets the requirements of Section 107(d)(3)(E). The following is a description of how each requirement has been achieved.

### 1. Attainment of the Lead NAAQS

To demonstrate that the Fayette County area is in attainment with the lead NAAQS, TDEC's submittal included air quality data for the years 1990-1994. No exceedances of the lead standard have occurred since Ross Metals, Inc. shutdown on July 1, 1992. This amount of monitoring data (more than eight consecutive quarters at the present time) without an exceedance of the lead standard is adequate to demonstrate attainment of the standard. Modeling may also be required to redesignate an area to attainment. The EPA believes that because there are no lead sources in the area since Ross Metals has shut down, then no modeling analysis is needed. The EPA is approving the State of Tennessee official request to discontinue monitoring the air quality of the Rossville area because Ross Metals, Inc. was the only lead source in the area and monitoring has been conducted for more than two years following its closure.

### 2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110 of part D of title I of the CAA. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved,

the State must have met all requirements that applied to the subject area prior to or at the time of a complete redesignation request. Requirements of the CAA that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation is not approved, the State remains obligated to fulfill those requirements. Therefore, for purposes of redesignation, to meet the requirement that the SIP fulfills all applicable requirements under the CAA, EPA has reviewed the Fayette County SIP to ensure that it satisfies all requirements due under the CAA prior to or at the time the State of Tennessee submitted its redesignation request (i.e., October 4, 1994).

#### A. Section 110 Requirements

Section 110 of the 1977 CAA required states to submit lead SIPs (see 52 FR 47686). Based on the requirements of the 1977 CAA amendments, the State of Tennessee submitted a prevention of significant deterioration (PSD) submittal which included lead. EPA believes that this SIP satisfies the requirements of section 110(a)(2) based on a memorandum from G. T. Helms to the EPA Regional Air Branch Chiefs dated June 14, 1979.

#### B. Part D Requirements

Before a lead nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Subpart 1 of part D establishes the general requirements applicable to all nonattainment areas and subpart 5 of part D establishes certain requirements applicable to lead nonattainment areas. Section 191(a) requires the submission of nonattainment SIPs meeting the requirements of part D for areas designated nonattainment for lead after the 1990 CAAA, such as the Fayette County area, within 18 months of the designation. As the Fayette County area was designated nonattainment on June 7, 1993, its part D SIP was not due until December 7, 1994. As a complete redesignation was submitted to EPA on October 6, 1994, for the area, the part D SIP requirements are not applicable requirements for purposes of the evaluation of this redesignation request.

The requirements of sections 172(c) and 192(a) for providing for attainment of the lead NAAQS, and the requirements of section 172(c) for requiring reasonable further progress (RFP), imposition of reasonably available control measures (RACM) the adoption of contingency measures, and the submission of an emission inventory have been satisfied or no longer

applicable due to the permanent closure of the only lead source in the area and the demonstration that the area is now attaining the standard. The EPA notes that the Ross Metals facility ceased operation and its permit has been revoked. See General Preamble for the Implementation of Title I, 57 FR 13498, 13564 (April 16, 1992).

### 3. Permanent and Enforceable Improvement in Air Quality

TDEC provided a copy of a letter dated May 5, 1994, certifying that Ross Metals has surrendered its operating permits, proving that Ross Metals, Inc., the sole source of lead emissions had ceased operation. Since the Ross Metals facility has ceased operation, the improvement in air quality resulting in attainment of the standard is permanent and enforceable.

### 4. Maintenance Plan

Section 175(A) of the CAA requires states that submit a redesignation request for a nonattainment area under section 107(d) to include a maintenance plan to ensure that the attainment of NAAQS for any pollutant is maintained. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating attainment for the ten years following the initial ten year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions are to include a requirement that the state will implement all measures for controlling the air pollutant of concern that were contained in the SIP prior to redesignation.

The State of Tennessee through TDEC has submitted a maintenance plan to ensure that the lead NAAQS is protected. The maintenance plan for the Fayette County area near Rossville, Tennessee contains the part C PSD program. The EPA believes that this submittal is adequate in light of the permanent closure of the only lead source in the area.

In addition, the EPA does not believe any additional contingency measures are needed. Contingency measures would serve no useful purpose in light of the permanent closure of the Ross Metals facility and the revocation of its permit. Moreover, any attempt to reopen

a facility on the same site would be subject to the permitting requirements of the State's preconstruction review program.

#### Final Action

In this action, EPA is approving the redesignation of the Fayette County area near Rossville, Tennessee, to attainment for lead and the accompanying SIP revision submitted by the State of Tennessee, because Tennessee has addressed all of the requirements of the CAA and the culpable lead source has been permanently shut down. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments.

The public should be advised that this action will be effective October 17, 1995. However, if adverse or critical comments are received by September 18, 1995, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action. The second document will be the final document which will address the comments received.

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 October 17, 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)].

The Office of Management and Budget has exempted these actions from review under Executive Order 12866.

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.

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), P.L. 104-4, establishes requirements for the 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, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. When a written statement is needed for an EPA rule, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

Through submission of the SIP or plan revisions approved in this action, the State and any affected local or tribal governments have elected to adopt the program provided for under section 175A of the Clean Air Act. The submission approved in this action may bind State, local and tribal governments to perform certain actions and also may ultimately lead to the private sector being required to perform certain duties. To the extent that the submission being approved by this action will impose or lead to the imposition of any mandate upon the State, local or tribal governments either as the owner or operator of a source or as a regulator, or would impose or lead to the imposition of any mandate upon the private sector, EPA's action will impose no new requirements; such sources are already subject to these requirements under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, or tribal governments in the aggregate, or on the private sector, in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

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.

#### List of Subjects

##### 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Lead.

##### 40 CFR Part 81

Air pollution control.

Dated: August 3, 1995.

**Patrick M. Tobin,**

*Acting Regional Administrator.*

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 52.2236, is added to read as follows:

**§ 52.2236 Control strategy; lead.**

The Tennessee Department of Environment and Conservation has submitted revisions to the Tennessee SIP on October 6, 1994. These revisions address the requirements necessary to change an lead nonattainment area to attainment. The maintenance plan for the Fayette County area near Rossville, Tennessee is comprised of a maintenance demonstration and NSR/

PSD program. For areas where the only lead source has shut down, these components are sufficient for an approvable maintenance plan. The State's maintenance plan is complete and satisfies all of the requirements of section 175(A) of the CAA.

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

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

2. In § 81.343 the lead table is amended by revising the entry for Fayette County (part) to read as follows:

**§ 81.343 Tennessee.**

\* \* \* \* \*

**PART 81—[AMENDED]**

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

**TENNESSEE—LEAD**

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * * *				
Fayette County (part) Area encompassed by a circle centered on Universal Transverse Mercator coordinate 267.59 E, 3881.30 N (Zone 16) with a radius of 1.0 kilometers.	Oct. 17, 1995	Attainment		
* * * * *				

\* \* \* \* \*

[FR Doc. 95-20191 Filed 8-17-95; 8:45 am]

BILLING CODE 6560-50-P

**40 CFR Parts 52 and 81**

[LA-24-1-7026a; FRL-5270-2]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Louisiana; Approval of the Maintenance Plans for the Parishes of Beauregard, Grant, Lafayette, Lafourche, and St. Mary; Redesignation of these Ozone Nonattainment Areas to Attainment**

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

**ACTION:** Direct final rule.

**SUMMARY:** On March 27, 1995, December 12, 1994, October 21, 1994, November 18, 1994, and November 23, 1994, the State of Louisiana submitted revised maintenance plans and requests to redesignate the ozone nonattainment areas of Beauregard, Grant, Lafayette, Lafourche, and St. Mary Parishes to attainment. These maintenance plans and redesignation requests were initially submitted to the EPA during the Summer of 1993. Although the EPA deemed these initial submittals complete, certain approvability issues existed. The State of Louisiana addressed these approvability issues and has revised its submissions. Under the Clean Air Act (CAA), nonattainment areas may be redesignated to attainment if sufficient data are available to warrant

the redesignation and the area meets the other CAA redesignation requirements. In this action, EPA is approving Louisiana's redesignation requests because they meet the maintenance plan and redesignation requirements set forth in the CAA and EPA is approving the 1990 base year emissions inventory. The approved maintenance plans will become a federally enforceable part of the State Implementation Plan (SIP) for Louisiana.

**DATES:** This final rule is effective on October 17, 1995, unless notice is received by September 18, 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** (FR).

**ADDRESSES:** Comments should be mailed to Thomas H. Diggs, Chief, Air Planning Section (6T-AP), U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. Copies of the State's petition and other information relevant to this action are available for inspection during normal hours at the following locations:

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-A), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733.  
Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Louisiana Department of Environmental Quality, Office of Air Quality, P.O. Box 82135, Baton Rouge, Louisiana 70884-2135.

Anyone wishing to review this petition at the U.S. EPA office is asked to contact the person below to schedule an appointment 24 hours in advance.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mick Cote, Planning Section (6T-AP), Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, telephone (214) 665-7219.

**SUPPLEMENTARY INFORMATION:**

**Background**

The CAA as amended in 1977 required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. The areas of Beauregard, Grant, Lafayette, Lafourche, and St. Mary Parishes, Louisiana were designated under section 107 of the 1977 CAA as nonattainment with respect to the ozone NAAQS on September 11, 1978 (40 CFR 81.319). In accordance with section 110 of the 1977 CAA, the State of Louisiana submitted an ozone SIP as required by part D on December 10, 1979. EPA fully approved this ozone SIP on October 29, 1981 (46 FR 53412). The most recent revision to the ozone SIP occurred on May 5, 1994, when the EPA approved a SIP revision for the State of Louisiana to correct certain enforceability deficiencies in their volatile organic compound (VOC) rules (59 FR 23164). For purposes of