



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2014-0904; FRL-9936-55-Region 4]

### **Air Plan Approval and Air Quality Designation; TN; Reasonably Available Control Measures and Redesignation for the TN Portion of the Chattanooga 1997 Annual PM<sub>2.5</sub> Nonattainment Area**

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

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving the portion of a State Implementation Plan (SIP) revision submitted by the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), on October 15, 2009, that addresses reasonably available control measures (RACM), including reasonably available control technology (RACT), for the Tennessee portion of the Chattanooga, TN-GA-AL nonattainment area for the 1997 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS) (hereinafter referred to as the “Chattanooga TN-GA-AL Area” or “Area”). Additionally, EPA is taking three separate final actions related to Tennessee’s November 13, 2014 request to redesignate the Tennessee portion of the Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS and associated SIP revision containing a plan for maintaining attainment of the standard in the Chattanooga TN-GA-AL Area. In these three actions, EPA is determining that the Area is continuing to attain the 1997 PM<sub>2.5</sub> NAAQS; approving and incorporating the State’s plan for maintaining attainment of the standard in the Area, including the 2025 motor vehicle emission

budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and PM<sub>2.5</sub> for the Tennessee portion of this Area, into the SIP; and redesignating the Tennessee portion of the Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS. In addition to the four final actions described above, EPA is also finding the 2025 MVEBs for the Tennessee portion of the Area adequate for the purposes of transportation conformity.

**DATES:** This rule will be effective [insert date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2014-0904. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the FOR FURTHER INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Joel Huey, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Huey may be reached by phone at (404) 562-9104 or via electronic mail at huey.joel@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background for Final Actions.**

On July 18, 1997, EPA promulgated the first air quality standards for PM<sub>2.5</sub>. EPA promulgated an annual standard at a level of 15 micrograms per cubic meter ( $\mu\text{g}/\text{m}^3$ ) (based on a 3-year average of annual mean PM<sub>2.5</sub> concentrations) and a 24-hour standard of 65  $\mu\text{g}/\text{m}^3$  (based on a 3-year average of the 98<sup>th</sup> percentile of 24-hour concentrations). *See* 62 FR 36852. On January 5, 2005, and supplemented on April 14, 2005, EPA designated Hamilton County in Tennessee, in association with counties in Alabama and Georgia in the Chattanooga TN-GA-AL Area, as nonattainment for the 1997 Annual PM<sub>2.5</sub> NAAQS.<sup>1</sup> *See* 70 FR 944 and 70 FR 19844, respectively. The Chattanooga TN-GA-AL Area consists of Hamilton County, Tennessee; a portion of Jackson County, Alabama; and Catoosa and Walker Counties in Georgia.

On November 13, 2014, TDEC requested that EPA redesignate the Tennessee portion of the Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS and submitted a SIP revision containing the State's plan for maintaining attainment of the 1997 PM<sub>2.5</sub> standard in the Area, including the 2025 MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> for the Tennessee portion of the Area. In a notice of proposed rulemaking (NPR) published on March 27, 2015, EPA proposed to determine that the

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<sup>1</sup> On April 23, 2013, and September 14, 2012, Alabama and Georgia (respectively) submitted requests and related SIP revisions for EPA to redesignate the Alabama and Georgia portions of the Chattanooga TN-GA-AL Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS. EPA has since redesignated the Alabama and Georgia portions of the Area. *See* 79 FR 76235 (December 22, 2014) and 79 FR 75748 (December 19, 2014), respectively.

Chattanooga TN-GA-AL Area is continuing to attain the 1997 PM<sub>2.5</sub> NAAQS;<sup>2</sup> to approve and incorporate into the Tennessee SIP the State's plan for maintaining attainment of the 1997 PM<sub>2.5</sub> standard in the Area, including the 2025 MVEBs for NO<sub>x</sub> and PM<sub>2.5</sub> for the Tennessee portion of the Area; and to redesignate the Tennessee portion of the Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS. *See* 80 FR 16331. EPA proposed to approve the redesignation request and the related SIP revision based, in part, on the Agency's longstanding interpretation that the nonattainment planning requirements in subpart 1 of title I, part D, of the Act (hereinafter "Subpart 1"), including RACM, are not "applicable" for purposes of CAA section 107(d)(3)(E)(ii) once an area is attaining the NAAQS and, therefore, need not be approved into the SIP before EPA can redesignate the area. *See* 80 FR 16331 (March 27, 2015). In the NPR, EPA also notified the public of the status of the Agency's adequacy determination for the NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Tennessee portion of the Area.

On March 18, 2015, the United States Court of Appeals for the Sixth Circuit (Sixth Circuit) issued an opinion in *Sierra Club v. EPA*, 781 F.3d 299 (6<sup>th</sup> Cir. 2015), that is inconsistent with EPA's longstanding interpretation regarding section 107(d)(3)(E)(ii) of the Clean Air Act (CAA or Act). In its decision, the Court vacated EPA's redesignation of the Indiana and Ohio portions of the Cincinnati-Hamilton nonattainment area to attainment for the 1997 PM<sub>2.5</sub> NAAQS because EPA had not yet approved RACM under Subpart 1 for the

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<sup>2</sup> On May 31, 2011 (76 FR 31239), EPA published a final determination that the Chattanooga TN-GA-AL Area had attained the 1997 Annual PM<sub>2.5</sub> NAAQS based upon quality-assured and certified ambient air monitoring data for the 2007-2009 time period. EPA has reviewed the most recent ambient monitoring data for the Area, which indicate that the Chattanooga TN-GA-AL Area continues to attain the 1997 Annual PM<sub>2.5</sub> NAAQS beyond the submitted 3-year attainment period of 2007-2009. As stated in EPA's March 27, 2015, proposal notice, the 3-year design value of 12.9 µg/m<sup>3</sup> for the Area for 2007-2009 meets the NAAQS of 15.0 µg/m<sup>3</sup>. Quality assured and certified data in EPA's Air Quality System (AQS) database provide a 3-year design value of 10.3 µg/m<sup>3</sup> for the Area for 2012-2014. Furthermore, preliminary monitoring data in the AQS database for 2015 indicate that the Area is continuing to attain the 1997 Annual PM<sub>2.5</sub> NAAQS. The AQS database is available at: <http://www3.epa.gov/airdata/index.html>.

Cincinnati Area into the Indiana and Ohio SIPs.<sup>3</sup> The Court concluded that “a State seeking redesignation ‘shall provide for the implementation’ of RACM/RACT, even if those measures are not strictly necessary to demonstrate attainment with the PM<sub>2.5</sub> NAAQS. . . . If a State has not done so, EPA cannot ‘fully approve[.]’ the area’s SIP, and redesignation to attainment status is improper.” *Sierra Club*, 781 F.3d at 313.

EPA is bound by the Sixth Circuit’s decision in *Sierra Club v. EPA* within the Court’s jurisdiction unless it is overturned.<sup>4</sup> Although EPA continues to believe that Subpart 1 RACM is not an applicable requirement under section 107(d)(3)(E) for an area that has already attained the 1997 Annual PM<sub>2.5</sub> NAAQS, on September 18, 2015, EPA proposed two separate but related actions regarding the Tennessee portion of the Chattanooga TN-GA-AL Area in response to the Court’s decision.<sup>5,6</sup> First, EPA proposed to approve the portion of the State’s October 15, 2009, attainment plan SIP revision that addresses RACM under Subpart 1 for the Tennessee portion of the Area. Second, EPA proposed to supplement the Agency’s proposed approval of Tennessee’s November 13, 2014, redesignation request for the Area by proposing that approval of the RACM portion of the aforementioned SIP revision satisfies the Subpart 1 RACM requirement in

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<sup>3</sup> The Court issued an amended decision on July 14, 2015, revising some of the legal aspects of the Court’s analysis of the relevant statutory provisions (section 107(d)(3)(E)(ii) and section 172(c)(1)) but maintaining its prior holding that section 172(c)(1) “unambiguously requires implementation of RACM/RACT prior to redesignation . . . even if those measures are not strictly necessary to demonstrate attainment with the PM<sub>2.5</sub> NAAQS.” *See Sierra Club v. EPA*, Nos. 12-3169, 12-3182, 12-3420 (6th Cir. July 14, 2015).

<sup>4</sup> The states of Kentucky, Michigan, Ohio, and Tennessee are located within the Sixth Circuit’s jurisdiction.

<sup>5</sup> Pursuant to 40 CFR 56.5(b), the EPA Region 4 Regional Administrator signed a memorandum on July 20, 2015, seeking concurrence from the Director of EPA’s Air Quality Policy Division (AQP) in the Office of Air Quality Planning and Standards to act inconsistent with EPA’s interpretation of CAA sections 107(d)(3)(E) and 172(c)(1) when taking action on pending and future redesignation requests in Kentucky and Tennessee because the Region is bound by the Sixth Circuit’s decision in *Sierra Club v. EPA*. The AQP Director issued her concurrence on July 22, 2015. The July 20, 2015, memorandum with AQP concurrence is located in the docket for today’s actions.

<sup>6</sup> On September 3, 2015, the Sixth Circuit denied the petitions for rehearing en banc of this portion of its opinion that were filed by EPA, the state of Ohio, and industry groups from Ohio. *Sierra Club v. EPA*, Nos. 12-3169, 12-3182, 12-3420, Doc. 136-1 (6th Cir. Sept. 3, 2015).

accordance with section 107(d)(3)(E) of the CAA. *See* 80 FR 56418.

The detailed rationale for EPA's findings and actions is set forth in the March 27, 2015, proposed rulemaking and in the September 18, 2015, supplemental proposed rulemaking. *See* 80 FR 16331 and 80 FR 56418, respectively. The comment periods associated with these two proposed rulemakings have closed and no adverse comments were received.

## **II. What are the Effects of These Actions?**

Approval of the RACM portion of Tennessee's October 15, 2009, attainment plan SIP revision satisfies the Subpart 1 RACM requirement in accordance with the Sixth Circuit's decision in *Sierra Club v. EPA*. Approval of Tennessee's redesignation request changes the legal designation of Hamilton County in the Tennessee portion of the Chattanooga TN-GA-AL Area, found at 40 CFR 81.343, from nonattainment to attainment for the 1997 PM<sub>2.5</sub> NAAQS.

Approval of Tennessee's associated SIP revision also incorporates a plan for maintaining the 1997 PM<sub>2.5</sub> NAAQS in the Area through 2025, including contingency measures to remedy any future violations of the NAAQS and procedures for evaluation of potential violations, into the SIP. The maintenance plan also establishes NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs of 3,200 tons per year (tpy) and 100 tpy, respectively, for the year 2025 for the Tennessee portion of the Area. Within 24 months from this final rule, these budgets must be used for future conformity determinations.

## **III. Final Actions.**

EPA is approving the RACM portion of a SIP revision submitted by TDEC on October 15, 2009, for the 1997 Annual PM<sub>2.5</sub> NAAQS in the Tennessee portion of the Chattanooga TN-GA-AL Area.

Additionally, EPA is taking three separate final actions regarding Tennessee's November 13, 2014 request to redesignate the Tennessee portion of the Area to attainment for the 1997 PM<sub>2.5</sub> NAAQS and related SIP revision. First, EPA is determining that the Chattanooga, TN-GA-AL Area is continuing to attain the 1997 PM<sub>2.5</sub> NAAQS.

Second, EPA is approving and incorporating the maintenance plan for the Tennessee portion of the Area, including NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the year 2025, into the Tennessee SIP. The maintenance plan demonstrates that the Area will continue to maintain the 1997 PM<sub>2.5</sub> NAAQS, and the budgets meet all of the adequacy criteria contained in 40 CFR 93.118(e)(4) and (5).

Third, EPA is determining that Tennessee has met the criteria under CAA section 107(d)(3)(E) for the Tennessee portion of the Area for redesignation from nonattainment to attainment for the 1997 PM<sub>2.5</sub> NAAQS. On this basis, EPA is approving Tennessee's redesignation request for the 1997 PM<sub>2.5</sub> NAAQS for the Tennessee portion of the Area. As mentioned above, approval of the redesignation request changes the official designation of Hamilton County in the Tennessee portion of the Chattanooga, TN-GA-AL Area for the 1997 PM<sub>2.5</sub> NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that it finds the newly-established NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs for the Tennessee portion of the Area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners must demonstrate conformity to the new NO<sub>x</sub> and PM<sub>2.5</sub> MVEBs pursuant to 40 CFR 93.104(e).

EPA has determined that these actions are effective immediately upon publication under the authority of 5 U.S.C. 553(d). The purpose of the 30-day waiting period prescribed in section 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Section 553(d)(1) allows an effective date less than 30 days after publication if a substantive rule “relieves a restriction.” These actions qualify for the exception under section 553(d)(1) because they relieve the State of various requirements for the Tennessee portion of the Chattanooga TN-GA-AL Area. Furthermore, section 553(d)(3) allows an effective date less than 30 days after publication “as otherwise provided by the agency for good cause found and published with the rule.” EPA finds good cause to make these actions effective immediately pursuant to section 553(d)(3) because they do not create any new regulatory requirements such that affected parties would need time to prepare before the actions take effect.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, these actions merely approve state law as meeting Federal requirements and do not

impose additional requirements beyond those imposed by state or Federal law. For these reasons, these actions:

- are not a significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- will not have disproportionate human health or environmental effects under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

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 [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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).

## **List of Subjects**

### **40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, and Particulate matter.

### **40 CFR Part 81**

Environmental protection, Air pollution control, National parks.

Dated: October 20, 2015.

Heather McTeer Toney,  
Regional Administrator,  
Region 4.

40 CFR parts 52 and 81 are amended as follows:

**PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

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

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart RR - Tennessee**

2. Section 52.2220(e) is amended by adding new entries “RACM analysis for the Tennessee portion of the Chattanooga Area for the 1997 PM<sub>2.5</sub> NAAQS” and “1997 Annual PM<sub>2.5</sub> Maintenance Plan for the Tennessee portion of Chattanooga TN-GA-AL Area” at the end of the table to read as follows:

**§ 52.2220 Identification of plan.**

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(e) \* \* \*

EPA-Approved Tennessee Non-Regulatory Provisions

Name of non-regulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
**	**	*	*	*
RACM analysis for the Tennessee portion of the Chattanooga Area for the 1997 PM <sub>2.5</sub> NAAQS	Hamilton County	10/15/2009	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

1997 Annual PM <sub>2.5</sub> Maintenance Plan for the Tennessee portion of the Chattanooga TN-GA-AL Area	Hamilton County	11/13/2014	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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**PART 81-DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES**

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

Authority: 42 U.S.C. 7401 *et seq.*

4. In § 81.343, the table entitled “Tennessee - 1997 Annual PM<sub>2.5</sub> NAAQS (Primary and Secondary)” is amended under “Chattanooga, TN-GA-AL:” by revising the entry for “Hamilton County” to read as follows:

**§ 81.343 Tennessee**

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Tennessee – 1997 Annual PM<sub>2.5</sub> NAAQS  
[Primary and Secondary]

Designated area	Designation <sup>a</sup>		Classification	
	Date <sup>1</sup>	Type	Date <sup>2</sup>	Type
Chattanooga, TN-GA-AL:				
Hamilton County	[Insert date of publication in the <u>Federal Register</u> ]	Attainment		
**	**	*	*	*

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.

<sup>1</sup> This date is 90 days after January 5, 2005, unless otherwise noted.

<sup>2</sup> This date is July 2, 2014, unless otherwise noted.

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[FR Doc. 2015-28009 Filed: 11/3/2015 8:45 am; Publication Date: 11/4/2015]