



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52 and 81**

**[EPA-R04-OAR-2016-0018; FRL-9948-02-Region 4]**

**Air Plan Approval and Air Quality Designation; TN; Redesignation of the Shelby County**

**2008 8-Hour Ozone Nonattainment Area to Attainment**

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

**ACTION:** Final rule.

**SUMMARY:** On January 19, 2016, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Tennessee that is within the Memphis, Tennessee-Mississippi-Arkansas (Memphis, TN-MS-AR) 2008 8-hour ozone nonattainment area (hereafter referred to as the “Memphis, TN-MS-AR Area” or “Area”) and a related State Implementation Plan (SIP) revision containing a maintenance plan and base year inventory for the Area. EPA is taking the following separate final actions related to the January 19, 2016, redesignation request and SIP revision: approving the base year emissions inventory for the Area into the SIP; determining that the Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone National Ambient Air Quality Standards (NAAQS); approving the State’s plan for maintaining attainment of the 2008 8-hour ozone NAAQS in the Area, including the motor vehicle emissions budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs) for the year 2027 for the Tennessee portion of the Area, into the SIP; and

redesignating the Tennessee portion of the Area to attainment for the 2008 8-hour ozone NAAQS. Additionally, EPA finds the MVEBs for the Tennessee portion of the Area adequate for the purposes of transportation conformity.

**DATES:** This rule will be effective [**insert 30 days after date of publication in the Federal Register**].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. **EPA-R04-OAR-2016-0018**. 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:** Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Ms. Spann can be reached by phone at (404) 562-9029 or via electronic mail at

spann.jane@epa.gov.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

On May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS that was promulgated on March 27, 2008. *See* 77 FR 30088. The Memphis, TN-MS-AR Area was designated nonattainment for the 2008 8-hour ozone NAAQS on May 21, 2012 (effective July 20, 2012) using 2008-2010 ambient air quality data. *See* 77 FR 30088. The Memphis, TN-MS-AR Area consists of a portion of DeSoto County in Mississippi, all of Shelby County in Tennessee, and all of Crittenden County in Arkansas. At the time of designation, the Memphis, TN-MS-AR Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. In the final implementation rule for the 2008 8-hour ozone NAAQS (SIP Implementation Rule),<sup>1</sup> EPA established ozone nonattainment area attainment dates based on Table 1 of section 181(a) of the Clean Air Act (CAA or Act). This established an attainment date three years after the July 20, 2012, effective date for areas classified as marginal areas for the 2008 8-hour ozone nonattainment designations. Therefore, the Memphis, TN-MS-AR Area's attainment date is July 20, 2015.

Based on the 2008 8-hour ozone nonattainment designation for the Memphis, TN-MS-AR Area, Tennessee was required to develop a nonattainment SIP revision addressing certain

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<sup>1</sup> This rule, entitled Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements and published at 80 FR 12264 (March 6, 2015), addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology (RACT), reasonably available control measures (RACM), major new source review (NSR), emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. This rule also addresses the revocation of the 1997 ozone NAAQS and the anti-backsliding requirements that apply when the 1997 ozone NAAQS are revoked.

Clean Air Act (CAA or Act) requirements. Specifically, pursuant to CAA section 182(a)(3)(B) and section 182(a)(1), the state was required to submit a SIP revision addressing emissions statements and base year emissions inventory requirements, respectively, for its portion of the Area. EPA approved the emissions statements requirements for the Tennessee portion of the Area into the SIP in a final action published on March 5, 2015. *See* 80 FR 11974.

On January 19, 2016, TDEC requested that EPA redesignate Tennessee's portion of the Memphis, TN-MS-AR Area to attainment for the 2008 8-hour ozone NAAQS, and submitted a SIP revision containing a section 182(a)(1) base year emissions inventory and the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the MVEBs for NO<sub>x</sub> and VOC for the year 2027 for the Tennessee portion of the Area.<sup>2</sup> In a notice of proposed rulemaking (NPRM) published on April 19, 2016, EPA proposed to: (1) approve and incorporate the base year emissions inventory into the SIP as meeting the requirements of section 182(a)(1); (2) determine that the Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone NAAQS; (3) approve and incorporate into the Tennessee SIP the State's plan for maintaining attainment of the 2008 8-hour ozone standard in the Area, including the 2027 MVEBs for NO<sub>x</sub> and VOC for Tennessee's portion of Memphis, TN-MS-AR Area; and (4) redesignate the Tennessee portion of the Area to attainment for the 2008 8-hour ozone NAAQS. *See* 81 FR 22948. In that notice, EPA also notified the public of the status of the Agency's adequacy determination for the NO<sub>x</sub> and VOC MVEBs for Tennessee's portion of Memphis, TN-MS-AR Area. No comments were received on the April 19, 2016, proposed rulemaking. The details of Tennessee's submittal and

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<sup>2</sup> The Tennessee Department of Environment and Conservation Air Pollution Control Board adopted the SIP revision containing the maintenance plan on January 13, 2016.

the rationale for EPA’s actions are further explained in the NPRM. *See* 81 FR 22948 (April 19, 2016).

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

Approval of Tennessee’s redesignation request changes the legal designation of Shelby County in the Memphis, TN-MS-AR Area, found at 40 CFR 81.325, from nonattainment to attainment for the 2008 8-hour ozone NAAQS. Approval of Tennessee’s associated SIP revision also incorporates a section 182(a)(1) base year emissions inventory and a plan into the SIP for maintaining the 2008 8-hour ozone NAAQS in the Tennessee portion of the Area through 2027. The maintenance plan establishes NOx and VOC MVEBs for 2027 for the Shelby County, Tennessee and includes contingency measures to remedy any future violations of the 2008 8-hour ozone NAAQS and procedures for evaluating potential violations. The MVEBs for the Tennessee portion of the Memphis, TN-MS-AR Area, along with the allocations from the safety margin, are provided in the table below.<sup>3</sup>

**MVEBs for the Tennessee portion of the Memphis, TN-MS-AR Area (tpd)**

|   | <b>2027</b> |            |
|---|-------------|------------|
|   | <b>NOx</b>  | <b>VOC</b> |
| <b>On-Road Emissions</b>                | 12.51       | 5.81       |
| <b>Safety Margin Allocated to MVEBs</b> | 49.04       | 13.19      |
| <b>Conformity MVEBs</b>                 | 61.56       | 19.01      |

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<sup>3</sup> As discussed in the NPRM, the safety margin is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. Tennessee chose to allocate a portion of the available safety margin to the NOx and VOC MVEBs for 2027. TDEC has allocated 49.04 tpd of the NOx safety margin to the 2027 NOx MVEB and 13.19 tpd of the VOC safety margin to the 2027 VOC MVEB.

### **III. Final Action**

EPA is taking a number of final actions regarding Tennessee's January 19, 2016, request to redesignate the Tennessee portion of the Memphis, TN-MS-AR Area to attainment and associated SIP revision. First, EPA is approving and incorporating Tennessee's section 182(a)(1) base year emissions inventory for the Tennessee portion of the Area into the SIP.

Second, EPA is determining that the Memphis, TN-MS-AR Area is attaining the 2008 8-hour ozone NAAQS.

Third, EPA is approving and incorporating the maintenance plan for the Tennessee portion of the Memphis, TN-MS-AR Area, including the NO<sub>x</sub> and VOC MVEBs for 2027, into the Tennessee SIP. The maintenance plan demonstrates that the Area will continue to maintain the 2008 8-hour ozone NAAQS through 2027.

Fourth, EPA is determining that Tennessee has met the criteria under CAA section 107(d)(3)(E) for redesignation of the State's portion of the Memphis, TN-MS-AR Area from nonattainment to attainment for the 2008 8-hour ozone NAAQS. On this basis, EPA is approving Tennessee's redesignation request. As mentioned above, approval of the redesignation request changes the official designation of Shelby County, Tennessee for the 2008 8-hour ozone NAAQS from nonattainment to attainment, as found at 40 CFR part 81.

EPA is also notifying the public that EPA finds the newly-established NO<sub>x</sub> and VOC MVEBs for the Tennessee portion of the Memphis, TN-MS-AR Area adequate for the purpose of transportation conformity. Within 24 months from this final rule, the transportation partners will need to demonstrate conformity to the new NO<sub>x</sub> and VOC MVEBs pursuant to 40 CFR 93.104(e)(3).

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

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability 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 law. For this reason, these actions:

- are not 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 significant regulatory actions 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. These actions are 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 these actions must be filed in the United States Court of Appeals for the appropriate circuit by [insert date 60 days after date of publication in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions 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. These actions may not be challenged later in proceedings to enforce their requirements. *See* section 307(b)(2).

## **List of Subjects**

### **40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

### **40 CFR Part 81**

Environmental protection, Air pollution control.

Dated: June 10, 2016.

Heather McTeer Toney,

Regional Administrator,

Region 4.

40 CFR parts 52 and 81 is 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 entries for “2008 8-hour Ozone Maintenance Plan for the Memphis TN-MS-AR Area” and “2008 8-hour Ozone Emissions Inventory for the Memphis TN-MS-AR Area” at the end of the table to read as follows:

**§52.2220 Identification of plan.**

\* \* \* \* \*

(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 |
|--|---|----------------------|--|-------------|
| **   | **  | **                   | *  |             |
| 2008 8-hour Ozone Maintenance Plan for the Memphis TN-MS-AR Area | Shelby County                               | 01/13/2016           | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] |             |

|   |               |            |  |  |
|---|---------------|------------|--|--|
| 2008 8-hour Ozone Emissions Inventory for the Memphis TN-MS-AR Area | Shelby County | 01/13/2016 | [Insert date of publication in <u>Federal Register</u> ]<br>[Insert citation of publication] |  |
|---|---------------|------------|--|--|

**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-2008 8-Hour Ozone NAAQS (Primary and secondary)” is amended under “Memphis, TN-MS-AR:” by revising the entry for “Shelby County” to read as follows:

**§ 81.343 Tennessee.**

\* \* \* \* \*

Tennessee-2008 8-Hour Ozone NAAQS (Primary and secondary)

| Designated area                 | Designation  |            | Classification    |      |
|---------------------------------|--|------------|-------------------|------|
|                                 | Date <sup>1</sup>  | Type       | Date <sup>1</sup> | Type |
| **                              | **   | *          | *                 | *    |
| Memphis, TN-MS-AR: <sup>2</sup> |  |            |                   |      |
| Shelby County                   | [Insert date of publication in the <u>Federal Register</u> ] | Attainment |                   |      |
| **                              | **   | *          | *                 | *    |

<sup>1</sup> This date is July 20, 2012, unless otherwise noted.

<sup>2</sup> Excludes Indian country located in each area, unless otherwise noted.

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