

absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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 rule 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *May 27, 2008*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 in 40 CFR Part 52

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

Dated: March 12, 2008.

#### Carol Rushin,

Acting Regional Administrator, Region 8.

■ 40 CFR part 52 is amended to read as follows:

#### PART 52—[AMENDED]

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

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

#### Subpart TT—Utah

■ 2. Section 52.2320 is amended by adding paragraph (c)(65) to read as follows:

#### § 52.2320 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(65) On March 22, 2007 the Governor of Utah submitted the addition to the Utah Administrative Code (UAC) of Rule R307–110–36. This rule incorporates by reference Section XXIII, Interstate Transport, of the Utah State Implementation Plan (SIP). The Interstate Transport declaration satisfies the requirements of Section 110(a)(2)(D)(i) of the Clean Air Act (CAA). On September 17, 2007, the Governor of Utah also submitted an amendment to the UAC Rule R307–130–4, "Options," that removes from the text a typographical error. It removes the word "not" which had been accidentally placed in this rule.

(i) Incorporation by reference.

(A) Addition to the UAC of rule R307–110–36 that incorporates by reference Section XXIII, "Interstate Transport," of the Utah SIP. Rule R307–110–36 was adopted by the UAQB on February 7, 2007, effective February 9, 2007, and it was submitted by the Governor to EPA on March 22, 2007.

(B) Revision to UAC Rule R307–130–4, "Options." This revision removes from the text the word "not." The amended text was adopted by the UAQB on June 21, 2007, effective July 13, 2007, and it was submitted by the Utah Governor to EPA on September 17, 2007.

(ii) Additional material.

(A) Replacement page for UAC Rule R307–110–36 attached to the March 22, 2007 submittal letter by the Utah Governor to EPA. The new page correctly refers to Section XXIII of the Utah SIP instead of the incorrect reference to Section XXII included in the corresponding page submitted with the Administrative Documentation for Rule R307–110–36.

■ 3. Section 52.2354 is added to read as follows:

#### § 52.2354 Interstate Transport.

CAA Section 110(a)(2)(D)(i) requirements for the 1997 8-hour ozone and PM<sub>2.5</sub> standards. Section XXIII, Interstate Transport, of the Utah SIP submitted by the Utah Governor on

March 22, 2007, satisfies the requirements of the Clean Air Act Section 110(a)(2)(D)(i) for the 8-hour ozone and PM<sub>2.5</sub> NAAQS promulgated by EPA in July 1997. Section XXIII, Interstate Transport, was adopted by the UAQB on February 9, 2007. The March 22, 2007 Governor's letter included as an attachment a set of replacement pages for the Interstate Transport text. The new pages reflect correctly that the Interstate Transport declaration is under Section XXIII of the Utah SIP and not under Section XXII as incorrectly indicated in the pages submitted with the Administrative Documentation for the adoption of this SIP section.

[FR Doc. E8–6275 Filed 3–27–08; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 81

[EPA–R04–OAR–2007–0959–200804; FRL–8547–8]

#### Determination of Nonattainment and Reclassification of the Memphis, TN/ Crittenden County, AR 8-Hour Ozone Nonattainment Area

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

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes EPA's finding of nonattainment and reclassification of the Memphis, Tennessee and Crittenden County, Arkansas 8-hour ozone nonattainment area (Memphis TN–AR Nonattainment Area). EPA finds that the Memphis TN–AR Nonattainment Area has failed to attain the 8-hour ozone national ambient air quality standard ("NAAQS" or "standard") by June 15, 2007, the attainment deadline set forth in the Clean Air Act (CAA) and Code of Federal Regulations (CFR) for marginal nonattainment areas. As a result, on the effective date of this rule, the Memphis TN–AR Nonattainment Area will be reclassified by operation of law as a moderate 8-hour ozone nonattainment area. The moderate area attainment date for the reclassified Memphis TN–AR Nonattainment Area would then be "as expeditiously as practicable," but no later than June 15, 2010. Once reclassified, Tennessee and Arkansas must submit State Implementation Plan (SIP) revisions that meet the 8-hour ozone nonattainment requirements for moderate areas, as required by the CAA. In this action, EPA is establishing the schedule for the States' submittal of the SIP revisions required for the

nonattainment area once it is reclassified. EPA determines that the States must submit these SIP revisions by March 1, 2009.

**DATES:** *Effective Date:* April 28, 2008.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2007-0959. 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 is not 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 Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960 or Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. 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, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9029. Mrs. Spann can also be reached via electronic mail at [spann.jane@epa.gov](mailto:spann.jane@epa.gov). Or Jeffrey Riley, Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. The telephone number is 214-665-8542. Mr. Riley can also be reached via electronic mail at [riley.jeffrey@epa.gov](mailto:riley.jeffrey@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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### I. What Is the Background for This Action?

On October 16, 2007, EPA proposed its finding that the Memphis TN-AR Nonattainment Area did not attain the 8-hour ozone NAAQS by June 15, 2007, the applicable attainment date (72 FR 58577). The proposed finding was based upon ambient air quality data from the years 2004, 2005, and 2006. In addition, as explained in the proposed rule, the Area did not qualify for an attainment date extension under the provisions of CAA section 181(a)(5) and 40 CFR 51.907, because the 4th highest daily value in the attainment year of 2006 was greater than 0.084 parts per million (ppm). In the October 16, 2007, proposal, EPA proposed that the appropriate reclassification of the area was to "moderate" nonattainment, in accordance with CAA Section 181(b)(2).

### II. Response to Comments

EPA received comments from the Shelby County Government of Tennessee (Shelby County), the Arkansas Department of Environmental Quality (ADEQ), the Sierra Club Chickasaw Group-Tennessee Chapter and two citizens in response to the proposed reclassification of the Memphis TN-AR Nonattainment Area from marginal to moderate, published on October 16, 2007 (72 FR 58577). Comments can be found on the internet in the electronic docket for this action. To access the comments, please go to <http://www.regulations.gov> and search for Docket No. EPA-R04-OAR-2007-0959, or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph above. A summary of the adverse comments received and EPA's response to the comments is presented below.

*Comment:* All commenters discussed including DeSoto County, Mississippi in the 8-hour ozone nonattainment area. Shelby County commented that the area's failure to meet the attainment date is not due to a lack of local control measures and regulation of ozone precursors, but is due to errors made in the original designation and that EPA's decision to exclude DeSoto County was an error that is negatively affecting the Area's ability to achieve the standard. Shelby County also commented that the DeSoto County monitor is exhibiting a disturbing trend towards violation that should be reversed. Shelby County and ADEQ suggested that the appropriate action would be to expand the

nonattainment area to include DeSoto County rather than to reclassify the current area to moderate status.

*Response:* The validity of the 2004 designations for DeSoto County or the Memphis ozone nonattainment area are not the subject of this rulemaking, nor is it relevant to EPA's determination of whether the Memphis area attained the 8-hour ozone NAAQS by its attainment date. The CAA establishes a process for air quality management for purposes of attaining and maintaining the NAAQS. After promulgation of a new or revised NAAQS, section 107(d)(1) of the CAA requires EPA to designate areas as meeting or not meeting the standard. EPA published the designations for the 8-hour ozone NAAQS on April 30, 2004. Prior to April 30, 2004, each State Governor had an opportunity to recommend air quality designations, including appropriate boundaries, to EPA. One hundred and twenty days prior to promulgating designations, EPA was required to notify the States, if EPA disagreed with a State's recommended designation and intended to modify the recommended designation. States then had an opportunity to provide a demonstration as to why the proposed modification was inappropriate. Any issues concerning the initial designations, including whether a county should have been included as part of a specific nonattainment area, should have been raised at that time and any challenges to EPA's final rule designating areas were required to be filed within 60 days of April 30, 2004. Thus, any claims now that DeSoto County should have been included as part of the Memphis ozone nonattainment area are not timely. The time for addressing the validity of the designations is past, and the appropriateness of the 2004 designations is not at issue in this rulemaking. As a result, all comments concerning purported deficiencies in the final designations for these areas are not relevant to this rulemaking.

With respect to the commenters' contention that EPA should now expand the nonattainment area to include DeSoto County, this rulemaking action, which involves a determination of nonattainment for the Memphis 8-hour ozone nonattainment area pursuant to section 181(b)(2), is not the appropriate time in which to address a reevaluation of the designation for the area.

In its proposed rulemaking EPA noted that DeSoto County is not included in the Memphis Area, but stated that "its monitoring data is regularly considered for potential contributions to the Memphis TN-AR Nonattainment Area airshed." 72 FR 58579. EPA is clarifying

in this final rulemaking that, while we reviewed the data from the DeSoto monitor, we are not relying on data from that monitor in reaching a final determination that the Memphis Area failed to attain the 8-hour ozone standard by its June 15, 2007, attainment date.

Notably, for the years 2004–2006, the monitor in DeSoto County demonstrated attainment. Because this final determination was based upon the Marion, AR monitor which provided the Area its 2004–2006 design value of .087 ppm, the additional DeSoto County data would not alter this determination. EPA also notes that preliminary data for 2007 for both the Marion and DeSoto monitors show that, if the data were quality assured, both monitors would register as nonattainment for 2005–2007. Again, the additional DeSoto County data would not alter the determination that the Area did not attain the standard.

*Comment:* Shelby County and ADEQ commented that EPA has invoked the legal principle known as “operation of law” as justification for reclassifying the Memphis, TN–AR Nonattainment Area from marginal to moderate. The commenters believe that the invocation of “operation of law” is, in this instance, a discretionary power. Shelby County commented that reclassification is not needed and will not serve to move the Area into attainment of the ozone standard any sooner than is currently predicted by the extensive computer modeling, and that reclassification will place an undue and completely unnecessary administrative cost on the taxpayers of Tennessee and Arkansas without improving air quality in the Area. ADEQ commented that reclassification is unmerited at this time and that “there would be no demonstrable harm to the public if the EPA Administrator used discretionary authority to waive the action otherwise the result of operation of law.” ADEQ also commented that delays in federal ozone programs were responsible for higher regional design values, and that “States and localities should not be required to take on new regulatory burdens as a result of programmatic delays over which they had no control. The EPA has not taken this into account in its deliberations as to whether redesignation [sic] is appropriate in this instance.”

*Response:* EPA disagrees with the assertion that reclassification upon a determination of failure to attain is a discretionary power, and that EPA can “waive” reclassification after it has determined that the area has failed to attain by its attainment date. In the

October 16, 2007, proposed rule (72 FR 58577), EPA cited section 181(b)(2)(A) of the CAA, which provides that, for reclassification upon failure to attain, “within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area’s design value (as of the attainment date), whether the area attained the standard by that date. 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 Section 181) 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).” Pursuant to section 181(b)(2), EPA has determined that the Memphis TN–AR Nonattainment Area failed to attain the 8-hour ozone NAAQS by June 15, 2007, the attainment deadline set forth in the CAA and CFR for marginal nonattainment areas. Because the Area is not classified as severe or extreme, the area shall be reclassified by operation of law to the next higher classification. The next higher classification for the Area (moderate) is higher than the classification applicable to the Area’s design value (marginal). Therefore, in accordance with the CAA, the Area must be reclassified by operation of law to a moderate nonattainment area. 72 FR 58579.

As EPA noted above, under section 181(b)(2)(A), the attainment determination is made solely on the basis of air quality, and any reclassification is by operation of law. Thus, the resulting requirements apply regardless of how the nonattainment came about, and the CAA does not allow EPA to assess the need, or lack thereof, for additional local measures. With respect to any perceived burden imposed by the new planning requirements, EPA notes that the moderate area requirements are imposed by section 182(b) of the CAA and the impact, economic or otherwise, of a reclassification is not a consideration in making the attainment determination under section 181(b)(2).

*Comment:* Shelby County and ADEQ commented that if EPA determines that it has no discretion on reclassification, the public comment process provides no opportunity for relevant comments on the proposed action to be considered.

*Response:* EPA disagrees that the public comment process provides no opportunity for relevant comments on

the proposed action. The process allows for an opportunity to ascertain whether EPA’s analysis of the relevant data and CAA requirements is correct. Under section 182(b)(2)(A), the attainment determination is made solely on the basis of air quality data, and reclassification and the level to which an area is reclassified is by operation of law. Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. Thus, in making the determinations required by the CAA, EPA solicits and will consider comments addressing EPA’s determination with respect to whether air quality data show attainment or nonattainment by the applicable attainment date, and EPA’s identification of any resulting reclassification that occurs by operation of law. There is, therefore, a meaningful role for public comments in determinations of attainment, specifically with regard to the data and EPA’s analysis of the data, but this is not inconsistent with, and does not alter the statutory scheme that provides that reclassification occurs as a matter of law, and is not within EPA’s discretion.

*Comment:* ADEQ commented that for the 2007 ozone season to date, the fourth highest value in the nonattainment Area had not exceeded 0.084 ppm and that the Area’s air quality appears to be improving. ADEQ further requested that EPA consider calendar year 2007 as an “extension year” and grant a one-year extension of the attainment date as a means of providing relief from the duplication of effort that will be required in the event that the recently proposed revisions to the ozone standard are promulgated in the near future.

*Response:* Sections 172(a)(2)(C) and 181(a)(5) of the CAA provide states with an opportunity to apply to extend the attainment date by one year. Section 181(a)(5) applies to areas classified under Subpart 2 of the CAA, and 40 CFR 51.907 provides EPA’s interpretation of section 172(a)(2)(C) and 181(a)(5) for purposes of the 8-hour ozone standard. For the 8-hour ozone standard, if an area’s fourth highest daily maximum 8-hour average value in the attainment year is 0.084 ppm or less, the area is eligible for a 1-year extension of the attainment date (40 CFR 51.907). The attainment year is the year in which the last full ozone season relied on for purposes of demonstrating attainment occurs. Because the attainment date for the Memphis Area was June 15, 2007, the last full ozone season preceding the Area’s attainment date was the 2006

ozone season and 2006 is considered the attainment year. In 2006, the Area's fourth highest daily maximum 8-hour average was 0.089 ppm. Based on this information, the Area does not qualify for a 1-year extension of the attainment date. Under the applicable statutory and regulatory provisions, EPA is unable to consider 2007 as an extension year. First, as explained above, the Area did not qualify for an initial 1-year extension based on its 2006 attainment year. Second, even if the Area had qualified for a 1-year extension based on 2006 data (which it did not), it would not qualify for a second 1-year extension based on preliminary data for 2007. This is because the Area's 4th highest daily 8-hour value, averaged over both 2006 (the original attainment year) and 2007 (the hypothetical "first extension year") is greater than 0.84 ppm. 40 CFR 51.907(b). Finally, preliminary data for 2005–2007 show that the Area is still not attaining the standard.

*Comment:* Shelby County commented that air quality in the Memphis Area has in recent years demonstrated a trend of improvement; that pollution measures in place are making a positive impact and will lead to further improvement; and that modeling shows that the Area will soon attain the standard. Shelby County also commented that reclassification could "result in an absurd conclusion since the possibility exists that, by next year, the only controlling monitor in the area could be located in a county that is attainment." ADEQ commented that for the 2007 ozone season to date, the fourth highest 8-hour ozone value for any monitor in the Area did not exceed 0.084 ppm; that they are hopeful ozone levels in 2008 and beyond will continue to show improvement; and that it is unfortunate that EPA considers it necessary to increase the severity of the ozone classification from marginal to moderate when it appears that the Area's air quality is improving. ADEQ also commented that "the redesignation [sic] to moderate that is proposed would, in this instance, result in an absurd conclusion."

*Response:* EPA recognizes the efforts taken by Shelby County, ADEQ, the Tennessee Department of Environment and Conservation, and the Memphis Area in general to improve air quality. However, while it is encouraging that the Area's air quality appears to be improving, unfortunately, it did not improve enough to meet the June 15, 2007, deadline for attainment.<sup>1</sup> The

statute requires an assessment of air quality as of an area's attainment date, and that assessment is the subject of today's rulemaking. (See also, our responses to previous comments.) Reclassification of the Area, which occurs by operation of law, as required by the CAA will lead to additional planning and emission controls, which will help ensure that the Area attains and maintains the 8-hour ozone standard.

### III. What Is the Effect of This Action?

#### A. Determination of Nonattainment, Reclassification of Memphis TN–AR Nonattainment Area and New Attainment Date

Pursuant to section 181(b)(2), EPA finds that the Memphis TN–AR Nonattainment Area failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA and 69 FR 23858 (April 30, 2004) for marginal ozone nonattainment areas. When this finding is effective, the Memphis TN–AR Nonattainment Area will be reclassified by operation of law from marginal nonattainment to moderate nonattainment. The reclassification to the next higher classification is mandated by Section 181(b)(2)(A) of the CAA. Moderate areas are required to attain the standard "as expeditiously as practicable" but no later than 6 years after designation or June 15, 2010. The "as expeditiously as practicable" attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. Also in this action, EPA is establishing a schedule by which Tennessee and Arkansas will submit the SIP revisions necessary for the reclassification to moderate nonattainment of the 8-hour ozone standard.

#### B. When Must Tennessee and Arkansas Submit SIP Revisions Fulfilling the Requirements for Moderate Ozone Nonattainment Areas

EPA must address the schedule by which Tennessee and Arkansas are required to submit revised SIPs addressing the requirements for the Memphis TN–AR moderate Nonattainment Area. When an area is reclassified, EPA has the authority under section 182(i) of the CAA to adjust the CAA's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, a state must provide for implementation of all control measures needed for attainment

no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the purposes of this reclassification of the Memphis TN–AR Nonattainment Area, March 1, 2009, is the beginning of the ozone monitoring season. As a result, EPA is requiring that the necessary SIP revisions be submitted by both Tennessee and Arkansas as expeditiously as practicable, but no later than March 1, 2009.

A revised SIP must include all the moderate area requirements in section 182(b) of the CAA including: (1) An attainment demonstration (40 CFR 51.908); (2) provisions for reasonably available control technology and reasonably available control measures (40 CFR 51.912); (3) reasonable further progress reductions in volatile organic compound (VOC) emissions (40 CFR 51.910); (4) contingency measures to be implemented in the event of failure to meet a milestone or attain the standard (CAA 172(c)(9)); (5) a vehicle inspection and maintenance program (40 CFR 51.350); and (6) nitrogen oxide and VOC emission offsets of 1.15 to 1 for major source permits (40 CFR 51.165(a)).

### IV. Final Action

Pursuant to CAA section 181(b)(2), EPA is making a final determination that the Memphis TN–AR marginal 8-hour Ozone Nonattainment Area failed to attain the 8-hour ozone NAAQS by June 15, 2007. Upon the effective date of this rule, the Memphis TN–AR marginal 8-hour Ozone Nonattainment Area will be reclassified by operation of law as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is establishing the schedule for submittal of the SIP revisions required for moderate areas once the area is reclassified. The required SIP revisions for Tennessee and Arkansas shall be submitted as expeditiously as practicable, but no later than March 1, 2009.

### V. Statutory and Executive Order Reviews

#### A. Executive Order 12866, Regulatory Planning and Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the Executive

<sup>1</sup> Moreover, as noted above, preliminary data for 2005–2007 shows that the Area remains in nonattainment.

Order. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

#### B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action to reclassify the Memphis TN-AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines does not establish any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards

(see, 13 CFR part 121); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

#### D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for 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. Before promulgating an EPA rule for which a written statement is needed, 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 to 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, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal

intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This action does not include a Federal mandate within the meaning of UMRA that may result in expenditures of \$100 million or more in any one year by either State, local, or Tribal governments in the aggregate or to the private sector, and therefore, is not subject to the requirements of sections 202 and 205 of the UMRA. Also, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and therefore, is not subject to the requirements of sections 203. EPA believes, as discussed previously in this document, that the finding of nonattainment is a factual determination based upon air quality considerations and that the resulting reclassification of the area must occur by operation of law. Thus, EPA believes that the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

#### E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This action merely determines that the Memphis TN-AR Nonattainment Area had not attained by its applicable attainment date, reclassifies the Memphis TN-AR Nonattainment Area as a moderate ozone nonattainment area and adjusts applicable deadlines. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This action does not have "Tribal implications" as specified in Executive Order 13175. This action merely determines that the Memphis TN-AR Nonattainment Area has not attained by its applicable attainment date, reclassifies the Memphis TN-AR Nonattainment Area as a moderate ozone nonattainment area and adjusts applicable deadlines. The CAA and the Tribal Authority Rule establish the relationship of the Federal government and Tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks*

Executive Order 13045, entitled "Protection of Children From Environmental Health and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health risks or safety risks addressed by this rule present a disproportionate risk to children. This action merely determines that the Memphis TN-AR Nonattainment Area has not attained by its applicable attainment date, reclassifies the Memphis TN-AR Nonattainment Area as a moderate ozone nonattainment area and adjusts applicable deadlines.

*H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211, entitled "Actions That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer Advancement Act*

As noted in the proposed rule, Section 12(d) of the National Technology Transfer Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS. This action merely determines that the Memphis TN-AR Nonattainment Area has not attained by its applicable attainment date, reclassifies the Memphis TN-AR "marginal" Nonattainment Area as a "moderate" ozone nonattainment area and adjusts applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely determines that the

Memphis TN-AR Nonattainment Area has not attained by its applicable attainment date, and reclassifies the Memphis TN-AR Nonattainment Area as a moderate ozone nonattainment area and adjusts applicable deadlines.

*K. Congressional Review Act*

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 rule 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**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*L. Petitions for Judicial Review*

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 May 27, 2008. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule 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 to reclassify the Memphis TN-AR area as a moderate ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (See, section 307(b)(2).)

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

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 14, 2008.

**J.I. Palmer, Jr.,**

*Regional Administrator, Region 4.*

Dated: March 19, 2008.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

■ 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 *et seq.*

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

revising the entry for Memphis, TN–AR and footnote 2 to read as follows:

■ 2. In § 81.304 the table for Arkansas—Ozone (8-hour Standard) is amended by

**§ 81.304 Arkansas.**

\* \* \* \* \*

**ARKANSAS—OZONE (8-HOUR STANDARD)**

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Memphis, TN–AR: (AQCR 018 Metropolitan Memphis Inter-state) Crittenden County.	.....	Nonattainment .....	( <sup>2</sup> )	Subpart 2/Moderate.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

<sup>2</sup> April 28, 2008.

\* \* \* \* \*  
 ■ 3. In § 81.343 the table for Tennessee—Ozone (8-hour Standard) is

amended by removing footnote 3 and revising the entry for “Memphis, TN–AR” to read as follows:

**§ 81.343 Tennessee.**

\* \* \* \* \*

**TENNESSEE—OZONE (8-HOUR STANDARD)**

Designated area	Designation <sup>a</sup>		Category/classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Memphis, TN–AR: Shelby County .....	.....	Nonattainment .....	March 28, 2008	Subpart 2/Moderate.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *

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

<sup>1</sup> This date is June 15, 2004, unless otherwise noted.

\* \* \* \* \*  
 [FR Doc. E8–6287 Filed 3–27–08; 8:45 am]  
 BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2005–0145; FRL–8354–4]

**Boscalid; Pesticide Tolerance**

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of boscalid in or on caneberry subgroup 13A at 6.0 parts per million (ppm); bushberry subgroup 13B at 13 ppm; cotton, undelinted seed at 1.0 ppm; cotton, gin by-products at 55 ppm; avocado at 1.5 ppm; sapote, black at 1.5 ppm; canistel at 1.5 ppm; sapote, mamey at 1.5 ppm; mango at 1.5 ppm; papaya at 1.5 ppm; sapodilla at 1.5 ppm; and star apple at 1.5 ppm. It revokes the existing berries, group 13 tolerance at 3.5 ppm because the two new caneberry and bushberry tolerances cover all

commodities in the berries, group 13. Tolerances are being increased for cucumber from 0.20 ppm to 0.5 ppm, and vegetable, root, subgroup 1A, except sugarbeet, garden beet, radish, and turnip from 0.7 ppm to 1.0 ppm. BASF, Inc requested these tolerance actions under the Federal Food, Drug, and Cosmetic Act (FFDCA). In addition, this action establishes a time-limited tolerance for residues of boscalid in or on Endive, Belgian, in response to the approval of a crisis exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing the post harvest use of the fungicide on Endive, Belgian to control the fungal pathogen, sclerotinia sclerotiorum. This regulation establishes a maximum permissible level of residues of boscalid in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2009.

**DATES:** This regulation is effective March 28, 2008. Objections and requests for hearings must be received on or before May 27, 2008, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also

Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0145. To access the electronic docket, go to <http://www.regulations.gov>, select “Advanced Search,” then “Docket Search.” Insert the docket ID number where indicated and select the “Submit” button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. All documents in the docket are listed in the docket index available in regulations.gov. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) 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 in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–