

KENTUCKY-OZONE (8-HOUR STANDARD)

Designated area	Designation <sup>a</sup>		Category/Classification	
	Date <sup>1</sup>	Type	Date <sup>1</sup>	Type
Clarksville-Hopkinsville, TN-KY Area: Christian County .....	10/24/05	Attainment.		

<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.

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 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 52 and 81**

[R04-OAR-2005-TN-0007-200527(a) FRL-7973-5]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Tennessee; Redesignation of the Montgomery County, Tennessee Portion of the Clarksville-Hopkinsville 8-Hour Ozone Nonattainment Area to Attainment**

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

**ACTION:** Direct final rule.

**SUMMARY:** On August 10, 2005, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), Air Pollution Control Division, submitted a final request: To redesignate the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS), and to approve a Tennessee State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Montgomery County, Tennessee. The interstate Clarksville-Hopkinsville 8-hour ozone nonattainment area is comprised of two counties (i.e., Christian County, Kentucky and Montgomery County, Tennessee). EPA is approving the 8-hour ozone redesignation request for the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area. Additionally, EPA is approving the 8-hour ozone maintenance plan for Montgomery County, Tennessee. This approval is based on EPA's determination that the

State of Tennessee has demonstrated that Montgomery County, Tennessee has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard. On March 21, 2005, the Commonwealth of Kentucky submitted a redesignation request and maintenance plan for the Christian County, Kentucky portion of this area for EPA parallel processing. In this action, EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the year 2016 that are contained in the 12-year 8-hour ozone maintenance plan for Montgomery County, Tennessee. EPA is approving such MVEBs.

**DATES:** This rule is effective on November 21, 2005, without further notice, unless EPA receives adverse written comments by October 24, 2005. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04-OAR-2005-TN-0007, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://docket.epa.gov/rmepub/RME>. EPA's electronic public docket and comment system is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. E-mail: [hoffman.annemarie@epa.gov](mailto:hoffman.annemarie@epa.gov) or [wood.amanetta@epa.gov](mailto:wood.amanetta@epa.gov).

4. Fax: (404) 562-9019.  
 5. Mail: "R04-OAR-2005-TN-0007," 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.

6. Hand Delivery or Courier. Deliver your comments to: Anne Marie Hoffman or Amanetta Wood, 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. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to RME ID No. R04-OAR-2005-TN-0007. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://docket.epa.gov/rmepub/>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, [regulations.gov](http://regulations.gov), or e-mail. The EPA RME Web site and the Federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in

the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the electronic docket are listed in the RME index at <http://docket.epa.gov/rmepub/>. Although listed in the index, some information is not publicly available, i.e., 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 either electronically in RME 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. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection.

**FOR FURTHER INFORMATION CONTACT:** Anne Marie Hoffman of the Regulatory Development Section or Amanetta Wood of the Air Quality Modeling and Transportation 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. The telephone number is (404) 562-9074 or (404) 562-9025. Ms. Anne Marie Hoffman can be reached via electronic mail at [hoffman.annemarie@epa.gov](mailto:hoffman.annemarie@epa.gov). Ms. Amanetta Wood can also be reached via electronic mail at [wood.amanetta@epa.gov](mailto:wood.amanetta@epa.gov).

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#### **I. What Are the Actions EPA Is Taking?**

Through this rulemaking, EPA is taking several related actions. EPA is making the determination that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and the Montgomery County, Tennessee portion has met the requirements for redesignation under section 107(d)(3)(E) of the CAA. The Clarksville-Hopkinsville area is a basic 8-hour nonattainment ozone area. Montgomery County is located in the Clarksville-Hopkinsville, Tennessee-Kentucky Metropolitan Statistical Area, which contains Christian County, Kentucky and Montgomery County, Tennessee. EPA is approving a request to change the legal designation of Montgomery County, Tennessee from nonattainment to attainment for the 8-hour ozone NAAQS.

EPA is also approving Tennessee's 8-hour ozone maintenance plan for Montgomery County (such approval being one of the CAA criteria for redesignation to attainment status). The maintenance plan is designed to help keep the Clarksville-Hopkinsville area (of which Montgomery County is a part) in attainment for the 8-hour ozone NAAQS for the next 12 years.

Additionally, through this rulemaking, EPA is announcing its action on the Adequacy Process for the newly-established 2016 MVEBs for Montgomery County, Tennessee. The Adequacy comment period for the 2016 MVEBs began on July 12, 2005, with EPA's posting of the availability of this submittal on EPA's Adequacy Web site (at <http://www.epa.gov/otaq/transp/conform/adequacy.htm>). The Adequacy comment period for these MVEBs closed on August 11, 2005. No requests or adverse comments on this submittal were received during EPA's Adequacy comment period. Please see section VII of this rulemaking for further explanation of this process.

#### **II. What Is the Background for the Action?**

Ground-level ozone is not emitted directly by sources. Rather, emissions of nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOC) react in the presence of sunlight to form ground-level ozone. NO<sub>x</sub> and VOC are referred to as precursors of ozone. The CAA establishes a process for air quality management through the NAAQS.

On July 18, 1997, EPA promulgated a revised 8-hour ozone standard of 0.08 parts per million (ppm). This new standard is more stringent than the previous 1-hour ozone standard. Under

EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.08 ppm (i.e. 0.084 ppm when rounding is considered). (See 69 FR 23857 (April 30, 2004) for further information). Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50. Specifically, section 2.3 of 40 CFR part 50, Appendix I,

"Comparisons with the Primary and Secondary Ozone Standards" states: "The primary and secondary ozone ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. The number of significant figures in the level of the standard dictates the rounding convention for comparing the computed 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration with the level of the standard. The third decimal place of the computed value is rounded, with values equal to or greater than 5 rounding up. Thus, a computed 3-year average ozone concentration of 0.085 ppm is the smallest value that is greater than 0.08 ppm."

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years of ambient air quality data. The Clarksville-Hopkinsville 8-hour ozone nonattainment area was designated using 2001 to 2003 ambient air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004 (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2—that address planning and control requirements for ozone nonattainment areas. (Both are found in title I, part D.) Subpart 1 (which covers areas that EPA refers to as "basic" nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which covers areas that EPA refers to as "classified" nonattainment) provides more specific requirements for certain ozone nonattainment areas. Some 8-hour ozone nonattainment areas are subject

only to the provisions of subpart 1. Other 8-hour ozone nonattainment areas are also subject to the provisions of subpart 2. Under EPA's Phase-1 8-Hour Ozone Implementation Rule, signed on April 15, 2004, an area was to be classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour ambient air quality design values. The Clarksville-Hopkinsville area was originally designated as a "basic" 8-hour ozone nonattainment area by EPA on April 30, 2004, (69 FR 23857) and is subject to subpart 1 of part D. In 2004, the ambient ozone data for the interstate Clarksville-Hopkinsville nonattainment area indicated no further violation of the 8-hour ozone standard, using data from the 3-year period of 2002–2004 (with the 2002–2004 design value of 0.082 ppm), to demonstrate attainment. Available preliminary monitoring data through August 2005 indicates continued attainment of the 8-hour ozone standard.

On March 21, 2005, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted a request for parallel processing and on May 20, 2005, submitted a final request: (1) To redesignate the Christian County, Kentucky portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone NAAQS, and (2) for EPA approval of a Kentucky State Implementation Plan (SIP) revision containing a 12-year maintenance plan for Christian County, Kentucky. EPA is taking action on the request to redesignate the Kentucky portion of the area (i.e., Christian County) to attainment for the 8-hour ozone NAAQS in a separate action.

On August 10, 2005, the State of Tennessee requested redesignation to attainment for the 8-hour ozone standard for the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville interstate 8-hour ozone area. The redesignation request includes three years of complete, quality-assured ambient air quality data for the ozone seasons of 2002 through 2004, indicating the 8-hour ozone NAAQS had been achieved for the Clarksville-Hopkinsville area (of which Montgomery County, Tennessee is a part). The ozone season for this area is from April 1 until September 30 of a calendar year. Under the CAA,

nonattainment areas may be redesignated to attainment if sufficient, complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

### III. What Are the Redesignation Review Criteria?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that: (1) The Administrator determines that the area has attained the applicable NAAQS; (2) the Administrator has fully approved the applicable implementation plan for the area under section 110(k); (3) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (4) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and, (5) the State containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

1. "Ozone and Carbon Monoxide Design Value Calculations," Memorandum from Bill Laxton, June 18, 1990;
2. "Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;
3. "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;
4. "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;
5. "State Implementation Plan (SIP) Actions Submitted in Response to Clean

Air Act (ACT) Deadlines," Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

6. "Technical Support Documents (TSD's) for Redesignation of Ozone and Carbon Monoxide (CO) Nonattainment Areas, Memorandum from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

7. "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992," Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

8. "Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas," Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993;

9. "Part D New Source Review (Part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

10. "Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

### IV. Why Is EPA Taking These Actions?

On August 10, 2005, the State of Tennessee requested redesignation of the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment for the 8-hour ozone standard. EPA believes that the State of Tennessee has demonstrated that Montgomery County, Tennessee (as part of the Clarksville-Hopkinsville area) has attained the standard and has met the requirements for redesignation set forth in section 107(d)(3)(E) of CAA.

### V. What Is the Effect of EPA's Actions?

Approval of this redesignation request would change the official designation of Montgomery County, Tennessee for the 8-hour ozone NAAQS found at 40 CFR part 81. It would also incorporate into the Tennessee SIP a plan for maintaining the 8-hour ozone NAAQS in the area through 2016. The maintenance plan includes contingency measures to remedy future violations of

the 8-hour ozone NAAQS, and would establish MVEBs of 3.00 tons per day (tpd) for VOC and 9.05 tpd for NO<sub>x</sub> for the year 2016.

**VI. What Is EPA's Analysis of the Request?**

EPA is making the determination that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone standard, and that all other redesignation criteria have been met. The basis for EPA's determination is as follows:

(1) *The Clarksville-Hopkinsville area has attained the 8-hour ozone NAAQS.*

EPA is making the determination that the area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour

ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and appendix I of part 50, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the EPA Air Quality System (AQS). The monitors generally should have remained at the same location for

the duration of the monitoring period required for demonstrating attainment.

KDAQ, on behalf of Tennessee, submitted ozone monitoring data to EPA for the ozone season from 2002 to 2004. There is currently one monitor measuring ozone, located within Christian County, Kentucky, which provides air quality data for the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area. The State of Tennessee relies on Kentucky's monitoring data for this area. This data has been quality assured and is recorded in AQS. The fourth-highest averages for 2002, 2003 and 2004, and the 3-year average of these values (*i.e.*, design value), are summarized in the following table:

County	2002	2003	2004	2002–2004
Christian .....	0.093	0.080	0.074	0.082

Available preliminary monitoring data through August 2005 indicates continued attainment of the 8-hour ozone standard. In addition, as discussed below with respect to the maintenance plan, KDAQ has committed to continue monitoring in these areas in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Kentucky provides an adequate demonstration that the Clarksville-Hopkinsville 8-hour ozone nonattainment area has attained the 8-hour ozone NAAQS.

(2) *Tennessee has a fully approved SIP under section 110(k) for Montgomery County and (5) has met all applicable requirements under section 110 and part D of the CAA.* Below is a summary of how these two criteria were met.

EPA has determined that Tennessee has met all applicable SIP requirements for Montgomery County under section 110 of the CAA (general SIP requirements). EPA has also determined that the Tennessee SIP satisfies the criterion that it meets applicable SIP requirements under part D of title I of the CAA (requirements specific to subpart 1 basic 8-hour ozone nonattainment areas) in accordance with section 107(d)(3)(E)(v). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements in accordance with section 107(d)(3)(E)(ii). In making these determinations, EPA ascertained which requirements are applicable to the area and that if applicable they are fully approved under section 110(k). SIPs

must be fully approved only with respect to applicable requirements.

a. *Montgomery County, Tennessee has met all applicable requirements under section 110 and part D of the CAA.* The September 4, 1992, Calcagni memorandum (see "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993, and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. See section 175A(c) of the CAA; *Sierra Club v. EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003) (redesignation of St. Louis, MO).

*General SIP requirements:* Section 110(a)(2) of title I of the CAA delineates the general requirements for a SIP, which include enforceable emissions limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect

data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement (Prevention of Significant Deterioration (PSD)) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development. These requirements are discussed in the following EPA documents: "Procedures for Processing Requests to Redesignate Areas to Attainment," Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992; "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (CAA) Deadlines," memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992; and "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Memorandum

from Michael H. Shapiro, Acting Assistant Administrator, September 17, 1993. See also guidance documents listed in section III above.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address the transport of air pollutants (NO<sub>x</sub> SIP Call, Clean Air Interstate Rule (CAIR)). EPA has also found, generally, that states have not submitted SIPs under section 110(a)(1) to meet the interstate transport requirements of section 110(a)(2)(D)(i). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state.

Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements, which are linked with a particular area's designation and classification, are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing policy on applicability (*i.e.*, for redesignations) of conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland-Akron-Loraine, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65 FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001). In addition, Tennessee's response to the CAIR rule is not due until September 2006.

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Nonetheless, EPA also notes that it has previously approved provisions in the Tennessee SIP addressing section 110 elements under the 1-hour standard (45 FR 53809, August 13, 1980; 47 FR 27267, June 24, 1982). EPA believes that the section 110 SIP approved for the 1-hour standard is sufficient to meet requirements under the 8-hour standard as well.

*Part D requirements:* EPA has also determined that the Tennessee SIP meets applicable SIP requirements under part D of the CAA since no requirements became due prior to the submission of the area's redesignation request. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements applicable to all nonattainment areas. Section 182 of the CAA, found in subpart 2 of part D, establishes additional specific requirements depending on the area's nonattainment classification. Subpart 2 is not applicable to the Clarksville-Hopkinsville area.

*Part D, subpart 1 applicable SIP requirements:* For purposes of evaluating this redesignation request, the applicable part D, subpart 1 SIP requirements for all nonattainment areas are contained in sections 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). None of the requirements under part D became due prior to the submission of the redesignation request, and therefore none are applicable to the area for purposes of redesignation. For example, the requirements for an attainment demonstration that meets the requirements of section 172(c)(1) are not yet applicable, nor are the requirements for Reasonably Achievable Control Technology (RACT) and Reasonably Available Control Measures (RACM) (section 172(c)(1), reasonable further progress (RFP) (section 172(c)(2)) and contingency measures (section 172(c)(9)).

In addition to the fact that these part D requirements did not become due prior to submission of the redesignation request and therefore are not applicable, EPA believes it is reasonable to interpret the conformity and new source review requirements as not requiring approval prior to redesignation.

*Section 176 Conformity Requirements:* Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that Federally

supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (“transportation conformity”) as well as to all other Federally supported or funded projects (“general conformity”). State conformity revisions must be consistent with Federal conformity regulations that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995, Tampa, FL).

EPA has also determined that areas being redesignated need not comply with the requirement that a NSR program be approved prior to redesignation, provided that the area demonstrates maintenance of the standard without part D NSR in effect since PSD requirements will apply after redesignation. The rationale for this view is described in a memorandum from Mary Nichols, Assistant Administrator for Air and Radiation, dated October 14, 1994, entitled “Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment.” The State has demonstrated that the area will be able to maintain the standard without part D NSR in effect, and therefore, the State need not have a fully approved part D NSR program prior to approval of the redesignation request. The State's PSD program will become effective in the area upon redesignation to attainment. See rulemakings for Detroit, MI (60 FR 12467–12468, March 7, 1995); Cleveland-Akron-Lorraine, OH (61 FR 20458, 20469–70, May 7, 1996); Louisville, KY (66 FR 53665, October 23, 2001); Grand Rapids, Michigan (61 FR 31834–31837, June 21, 1996). Thus, the area has satisfied all applicable requirements under section 110 and part D of the CAA.

b. *The area has a fully approved applicable SIP under section 110(k) of the CAA.* EPA has fully approved the applicable Tennessee SIP for the Montgomery County area under section 110(k) of the Clean Air Act. EPA may rely on prior SIP approvals in approving a redesignation request, Calcagni Memo

at p. 3; *Southwestern Pennsylvania Growth Alliance v. Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998); *Wall v. EPA*, 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Tennessee has adopted and submitted, and EPA has fully approved at various times, provisions addressing the various 1-hour ozone standard SIP elements applicable in the Montgomery County area (45 FR 53809, August 13, 1980 and 49 FR 1342, January 11, 1984). As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that since the part D requirements did not become due prior to submission of the redesignation request, they also are therefore not applicable requirements for purposes of redesignation.

(3) *The air quality improvement in the Clarksville-Hopkinsville 8-hour ozone area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions.*

EPA believes that the State has demonstrated that the observed air quality improvement in the area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA has determined that the implementation of the following permanent and enforceable emissions controls, that occurred from 2001–2004, have reduced local VOC and NO<sub>x</sub> emissions and brought the area into attainment:

- Federal Motor Vehicle Control Standards in Tennessee;
- EPA's Tier 2/Low Sulfur Gasoline program;
- EPA's Heavy-Duty Engine and Vehicle and Fuel Standards;
- Federal controls on certain nonroad engines implemented during the 2002–2004 period;
- Reductions due to the NO<sub>x</sub> SIP Call;

In addition to the reductions mentioned above, the State of Tennessee is also relying on the following controls to maintain the 8-hour standard:

- Prevention of Significant Deterioration requirements;

- Federal controls on certain nonroad engines after 2000;
- Federal control through Maximum Achievable Control Technology (MACT) of Hazardous Air Pollutants emissions will also contribute to maintaining the standard in the area.

The State has demonstrated that the implementation of permanent and enforceable emissions controls have reduced local VOC and NO<sub>x</sub> emissions. Most of the reductions are attributable to Federal programs such as EPA's Tier 2/Low Sulfur Gasoline program and other national clean fuel programs that began implementation in 2004. Additionally, the State has indicated in its submittal that the Clarksville-Hopkinsville area has benefited from emissions reductions that have been achieved and will continue to be achieved through implementation of the NO<sub>x</sub> SIP Call, beginning in 2002. The State has also demonstrated that year-to-year meteorological changes and trends are not the likely source of the overall, long-term improvement in ozone levels. Also, the following non-highway mobile source reduction programs were implemented during the 2002–2004 period: small spark-ignition engines, large-spark ignition engines, locomotives and land-based diesel engines. EPA believes that permanent and enforceable emissions reductions in and surrounding the nonattainment area are the cause of the long-term improvement in ozone levels, and are the cause of the area achieving attainment of the ozone standard.

(4) *The area has a fully approved maintenance plan pursuant to section 175A of the CAA.* In conjunction with its request to redesignate the Montgomery County, Tennessee portion of the Clarksville-Hopkinsville 8-hour ozone nonattainment area to attainment status, TDEC submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Montgomery County area for at least 10 years after the effective date of redesignation to attainment.

#### *a. What Is Required in a Maintenance Plan?*

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan

which demonstrates that attainment will continue to be maintained for the 10 years following the initial 10-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum, dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address five requirements: the attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

#### *b. Attainment Emissions Inventory*

The Clarksville-Hopkinsville area has selected 2004 as “the attainment year” for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2004 VOC and NO<sub>x</sub> emissions for the Montgomery County area were developed consistent with EPA guidance and are summarized in the table in the following subsection.

#### *c. Maintenance Demonstration*

The August 10, 2005, submittal includes a 12-year maintenance plan for Montgomery County. This demonstration:

(i) Shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO<sub>x</sub> remain at or below attainment year 2004 emissions levels. The year 2004 was chosen as the attainment year because it is one of the most recent three years (i.e., 2002, 2003, and 2004) for which the Clarksville-Hopkinsville area has clean air quality data for the 8-hour ozone standard.

(ii) Uses 2004 as the attainment year and includes future inventory projected years for 2007, 2010, 2013, and 2016.

(iii) Identifies an “out year,” at least 10 years after the time necessary for EPA to review and approve the maintenance plan. Per 40 CFR part 93, a MVEB was established for the last year of the maintenance plan. See section VII below.

(iv) Provides the following actual and projected emissions inventories for Montgomery County.

NO<sub>x</sub> EMISSIONS (TPD) FOR MONTGOMERY COUNTY

Source category	2004	2007	2010	2013	2016
Point .....	0.79	0.90	0.99	1.08	1.18
Area .....	1.26	1.27	1.26	1.27	1.27
Mobile .....	12.39	10.52	8.54	6.38	4.88
Nonroad .....	4.22	3.95	3.63	3.33	2.99
Total .....	18.66	16.65	14.42	12.06	10.32
Safety Margin .....	.....	2.02	4.25	6.61	8.34

VOC EMISSIONS (TPD) FOR MONTGOMERY COUNTY

Source category	2004	2007	2010	2013	2016
Point .....	2.22	2.45	2.64	2.90	3.18
Area .....	11.60	12.10	12.40	12.90	13.30
Mobile .....	5.27	4.35	3.68	3.15	2.82
Nonroad .....	1.46	1.32	1.14	1.00	0.90
Total .....	20.56	20.22	19.86	19.95	20.20
Safety Margin .....	.....	0.34	0.70	0.61	0.36

A 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. The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS.

d. Monitoring Network

There is currently one monitor measuring ozone, located within Christian County, Kentucky, which provides air quality data for the entire Clarksville-Hopkinsville 8-hour ozone nonattainment area. The Commonwealth of Kentucky has committed in its maintenance plan to continue operation of the ozone monitor in compliance with 40 CFR part 58, and has addressed the requirement for monitoring. Kentucky's approved SIP commitment satisfies Tennessee's obligation for continued monitoring for the Clarksville-Hopkinsville area.

e. Verification of Continued Attainment

The State has the legal authority to enforce and implement the requirements of the ozone maintenance plan for Montgomery County, Tennessee. This includes the authority to adopt, implement and enforce any subsequent emissions control contingency measures determined to be necessary to correct future ozone attainment problems.

Tennessee will track the progress of the maintenance plan by performing future reviews of actual emissions for the area using the latest emissions factors, models and methodologies. For these periodic inventories the State will

review the assumptions made for the purpose of the maintenance demonstration concerning projected growth of activity levels. If any of these assumptions appear to have changed substantially, the State will re-project emissions.

g. Contingency Plan

The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the CAA requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the State will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. A state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that a state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment in accordance with section 175A(d).

In the August 10, 2005, submittal, Tennessee affirms that all programs instituted by the State and EPA will remain enforceable, and that sources are prohibited from reducing emissions controls following the redesignation of the area. In the submittal, if there is a measured violation of the 8-hour ozone NAAQS in the Clarksville-Hopkinsville

nonattainment area, the State of Tennessee commits to develop regulations for at least one of the following control measures for submission to the EPA within nine months. The State will also submit a control plan to EPA within twelve months. All regulatory programs will be implemented in twenty-four months from a measured violation. The State will consider one or more of the following contingency measures to re-attain the standard.

- RACT for NO<sub>x</sub> sources.
- Programs or incentives to decrease motor vehicle use.
- Trip reduction ordinances.
- Implementation of a program to require additional emissions reductions on stationary sources.
- Implementation of a program to enhance inspection of stationary sources to ensure emissions control equipment is functioning properly.
- Implementation of fuel programs, including incentives for alternative fuels.
- Restrictions of certain roads or lanes for, or construction of such roads or lanes for use by, passenger buses or high-occupancy vehicles.
- Employer-based transportation management plans, including incentives programs to limit or restrict vehicle use in downtown areas, or other areas of high emissions concentration, particularly during periods of peak use.
- Programs for new construction and major reconstruction of paths for use by pedestrians or by non-motorized vehicles when economically feasible and in the public interest.

In addition, the maintenance plan provides that in the event that a measured violation of the 8-hour ozone design value occurs in any portion of the maintenance area, or if periodic emissions inventory updates reveal excessive or unanticipated growth greater than 10 percent in ozone precursor emissions, the State will evaluate existing control measures to see if any further emissions reduction measures should be implemented at that time.

EPA has concluded that the maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The maintenance plan SIP revision submitted by Tennessee for Montgomery County meets the requirements of section 175A of the CAA.

#### VII. What Is an Adequacy Determination and What is the Status of EPA's Adequacy Determination for Montgomery County's Proposed New MVEBs for the Year 2016?

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (e.g. reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions in the maintenance demonstration that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must "conform" to (i.e., be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. "Conformity" to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. If a transportation plan does not "conform," most new projects that would expand the capacity of roadways cannot go

forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted "control strategy" SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB contained therein "adequate" for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and Federal agencies in determining whether proposed transportation projects "conform" to the SIP as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining "adequacy" of an MVEB are set out in 40 CFR 93.118(e)(4).

EPA's process for determining "adequacy" consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs was initially outlined in EPA's May 14, 1999 guidance, "Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision." This guidance was finalized in the Transportation Conformity Rule Amendments for the "New 8-Hour Ozone and PM2.5 National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments—Response to Court Decision and Additional Rule Change" on July 1, 2004 (69 FR 40004). EPA follows this guidance and rulemaking in making its adequacy determinations.

Montgomery County's 12-year maintenance plan submission contained new VOC and NO<sub>x</sub> MVEBs for the year 2016. The availability of the SIP submission with the 2016 MVEBs was announced for public comment on EPA's adequacy Web page on July 12, 2005, at: <http://www.epa.gov/otaq/transp/conform/currstips.htm>. The EPA public comment period on the adequacy of the 2016 MVEBs for Montgomery County, Tennessee closed on August 11, 2005. EPA did not receive any adverse comments or requests for the submittal.

Through this rulemaking, EPA is finding adequate and approving those MVEBs for use to determine transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets. These MVEBs will be separate state area budgets for the Montgomery County, Tennessee area. The Commonwealth of Kentucky has

established MVEBs for the Christian County portion of the Clarksville-Hopkinsville area through the Kentucky SIP. The following table defines the 2016 MVEBs for Montgomery County, Tennessee.

#### MONTGOMERY COUNTY 8-HOUR OZONE MAINTENANCE AREA MVEBS

	2016
NO <sub>x</sub> (tpd) .....	9.05
VOC (tpd) .....	3.00

#### VIII. Action on the Redesignation Request, the Maintenance Plan SIP Revision Including Approval of the 2016 MVEBs

EPA is making the determination that the Clarksville-Hopkinsville area has attained the 8-hour ozone NAAQS. EPA is approving the redesignation of the Montgomery County, Tennessee portion of the area from nonattainment to attainment for the 8-hour ozone NAAQS. After evaluating the State of Tennessee's redesignation request, EPA has determined that it meets the redesignation criteria set forth in section 107(d)(3)(E) of the Clean Air Act. EPA believes that the redesignation request and monitoring data demonstrate that the Clarksville-Hopkinsville area (of which Montgomery County is a part) has attained the 8-hour ozone standard. The final approval of this redesignation request would change the official designation for the Montgomery County area from nonattainment to attainment for the 8-hour ozone standard.

EPA is also approving the maintenance plan SIP revision. Approval of the maintenance plan for Montgomery County is allowable, because the State of Tennessee has demonstrated that the plan meets the requirements of section 175A as described more fully in this rulemaking. Additionally, EPA is finding adequate and approving the new 2016 MVEBs, submitted by Tennessee for Montgomery County, in conjunction with its redesignation request. Within 24 months from the effective date of this action, the transportation partners will need to demonstrate conformity to these new MVEBs pursuant to 40 CFR 93.104(e). EPA is publishing this rule without prior approval because the Agency views this as noncontroversial and anticipates no adverse comment. However, in the Proposed Rules section of today's **Federal Register** EPA is publishing a proposal to approve the redesignation and maintenance plan that will serve as the proposal if adverse comments are filed. This rule will be

effective on November 21, 2005 unless EPA receives adverse comments by October 24, 2005. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address the public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### IX. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act 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 new regulatory requirements on sources. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism

implications because it does 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 (64 FR 43255, August 10, 1999). This action merely affects the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe that the rule concerns an environmental health risk or safety risk that may disproportionately affect children.

In reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the 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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2005. 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

#### 40 CFR Part 52

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

#### 40 CFR Part 81

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

Dated: September 13, 2005.

#### A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ 40 CFR part 52 and 81 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 *et seq.*

#### Subpart RR—Tennessee

■ 2. Section 52.2220(e) is amended by adding a new entry at the end of the table for “8-Hour Ozone Maintenance plan for the Montgomery County, Tennessee area” to read as follows:

#### § 52.2220 Identification of plan.

\* \* \* \* \*  
(e) \* \* \*

EPA-APPROVED TENNESSEE NON-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State effective date	EPA approval date	Explanation
* 8-Hour Ozone Maintenance plan for the Montgomery County, Tennessee area.	* Montgomery County .....	* 08/10/2005	* 09/22/2005 [Insert first page of publication]	* 

**PART 81—[AMENDED]**

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

Authority: 42 U.S.C. 7401 *et seq.*  
 ■ 2. In § 81.318, the table entitled “Tennessee-Ozone (8-Hour Standard)” is amended by revising the entry for

“Clarksville-Hopkinsville, TN-KY; Montgomery County” to read as follows:

**§ 81.343 Tennessee.**  
 \* \* \* \* \*

**TENNESSEE—OZONE**  
 [8-Hour Standard]

Designated area	Designation <sup>a</sup>		Category/Classification	
	Date <sup>b</sup>	Type	Date <sup>b</sup>	Type
* Clarksville-Hopkinsville, TN-KY Area: Montgomery County .....	* October 24, 2005	* Attainment.	* 	* 

<sup>a</sup> Includes Indian Country located in each county or area, except as otherwise specified.  
<sup>b</sup> This date is June 15, 2004, unless otherwise noted.

\* \* \* \* \*  
 [FR Doc. 05-18953 Filed 9-21-05; 8:45 am]  
 BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 60**

[OAR-2003-0119; FRL-7971-9]

RIN 2060-AN31

**Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units**

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

**ACTION:** Final rule; amendments.

**SUMMARY:** The EPA has completed its reconsideration of certain regulatory definitions that determine the type of sources subject to EPA’s new source performance standards (NSPS) and emission guidelines (EG) for commercial and industrial solid waste incineration (CISWI) units under section 129 of the Clean Air Act (CAA). With this action, EPA is promulgating revised definitions for the terms “solid waste,” “commercial or industrial waste,” and “commercial and industrial solid waste

incineration unit.” The final CISWI definitions of these terms promulgated today are consistent with EPA’s February 2004 reconsideration proposal in that EPA will continue to identify CISWI units based on whether such units combust waste without energy recovery. However, the revised definitions promulgated today do not include certain regulatory language proposed in February 2004 to include units with only waste heat recovery in the CISWI source category. In a subsequent rulemaking action, EPA intends to propose additional regulatory language to address units with only waste heat recovery and assess the impacts of the inclusion of these units in the CISWI source category. As a result of our action today on the CISWI definitions, it is not necessary to make any corresponding revisions to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Industrial, Commercial, and Institutional Boilers and Process Heaters.

**DATES:** The final rule is effective September 22, 2005.

**ADDRESSES:** *Docket:* EPA has established a docket for this action under Docket ID No. OAR-2003-0119. All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some

information is not publicly available, *i.e.*, 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 either electronically in EDOCKET or in hard copy at the EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the EPA Docket Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brian Shrager, Combustion Group, Emission Standards Division (C439-01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541-7689; e-mail address: [shrager.brian@epa.gov](mailto:shrager.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:**  
*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by November 21, 2005. Under section 307(d)(7)(B) of the CAA, only an