

(T) Consent Order 23–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the McLouth Steel Company, Trenton Plant.

(U) Consent Order 24–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Michigan Foundation Company, Cement Plant.

(V) Consent Order 25–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Michigan Foundation Company, Sibley Quarry.

(W) Consent Order 26–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Morton International, Inc., Morton Salt Division.

(X) Consent Order 27–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the National Steel Corporation, Great Lakes Division.

(Y) Consent Order 28–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the National Steel Corporation, Transportation and Materials Handling Division.

(Z) Consent Order 29–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Peerless Metals Powders, Incorporated.

(AA) Consent Order 30–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Rouge Steel Company.

(BB) Consent Order 31–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Keywell Corporation.

(CC) Consent Order 32–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the St. Marys Cement Company.

(DD) Consent Order 33–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the United States Gypsum Company.

(EE) Consent Order 34–1993 effective October 12, 1994 issued by the MDNR. This Order limits the PM emissions for the Wyandotte Municipal Power Plant.

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40 CFR Part 81

[VA37–1–6812a; FRL–5139–8]

Clean Air Act Promulgation of Reclassification of Ozone Nonattainment Areas in Virginia, and Attainment Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action reclassifies the Norfolk-Virginia Beach-Newport News (Hampton Roads), VA ozone nonattainment area from marginal nonattainment to moderate nonattainment. This action also determines that the Sussex, DE; Allentown-Bethlehem-Easton, PA–NJ; Altoona, PA; Erie, PA; Harrisburg-Lebanon-Carlisle, PA; Johnstown, PA; Lancaster, PA; Scranton-Wilkes-Barre, PA; Youngstown-Warren-Sharon, PA–OH; York, PA; and Greenbrier, WV ozone nonattainment areas classified as marginal have attained the ozone air quality standard by the November 15, 1993 attainment date. In addition, this action determines that the Kent and Queen Anne's Counties, MD marginal ozone nonattainment area attained the ozone standard by November 1994. These actions are based on monitored air quality readings for ozone during the years 1991–1994. This is not a redesignation action for these marginal areas for which air quality monitoring data indicates attainment of the standard. The Clean Air Act requires that a separate redesignation request be submitted by the appropriate states to EPA. Finally, this document sets forth the method which EPA will use throughout the country henceforth to notify the public that areas have attained an air quality standard. EPA is taking no action in this document regarding the Smyth County, VA nonattainment area.

DATES: This action will be effective March 20, 1995, unless notice is received by February 16, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection

Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Regional office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

A. Clean Air Act Requirements and EPA Actions Concerning Designation and Classification

Section 107(d)(4) of the Clean Air Act (the Act) required the States and EPA to designate areas as attainment, nonattainment, or unclassifiable for ozone as well as other pollutants for which national ambient air quality standards (NAAQSs) have been set. Section 181(a)(1) (table 1) required that ozone nonattainment areas be classified as marginal, moderate, serious, severe, or extreme, depending on their air quality.

In a series of **Federal Register** documents, EPA completed this designation and classification process. See 56 FR 58694 (November 6, 1991); 57 FR 56762 (Nov. 30, 1992); and 59 FR 18967 (April 21, 1994). By these documents, EPA designated and classified all areas of the country for ozone.

Areas designated nonattainment for ozone are required to meet attainment dates specified under the Act. For areas classified Marginal through Extreme, the attainment dates range from November 15, 1993 through November 15, 2010. A discussion of the attainment dates is found in the General Preamble, 57 FR 13498 (April 16, 1992).

The Sussex, DE; Kent and Queen Anne's Counties, MD; Allentown-Bethlehem-Easton, PA–NJ; Altoona, PA; Erie, PA; Harrisburg-Lebanon-Carlisle, PA; Johnstown, PA; Lancaster, PA; Scranton-Wilkes-Barre, PA; Youngstown-Warren-Sharon, PA–OH; York, PA; Norfolk-Virginia Beach-Newport News (Hampton Roads), VA; Smyth County, VA (portion of White Top Mountain); and Greenbrier, WV areas were designated nonattainment and classified marginal for ozone pursuant to 56 FR 56694 (November 6, 1991). By this classification, their attainment date became November 15, 1993.

B. Clean Air Act Requirements and EPA Actions Concerning Reclassification

Section 181(b)(2)(A) requires the Administrator, shortly after the attainment date, to determine whether ozone nonattainment areas attained the NAAQS. This provision states:

Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the areas design value (as of the attainment date), whether the area attained the standard by the date.

This provision further states that, for areas classified as marginal, moderate, or serious, if the Administrator determines that the area did not attain the standard by its attainment date, the area must be reclassified upwards (bumped-up):

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 this section 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).

Finally, subparagraph (B) of section 181(b)(2) mandates that the Administrator publish a document in the **Federal Register** identifying each area that failed to attain the NAAQS.

As quoted above, section 181(b)(2)(A) states that the determination of attainment status be based on the area's "design value". EPA interprets this provision generally to refer to EPA's methodology for determining attainment status. See generally, H Comm. Rep. 101-490 pp. 197, 232 (1990) (House Energy and Commerce Committee Report).

For ozone, EPA determines attainment status on the basis of the expected number of exceedances of the NAAQS over the three-year period up to, and including, the attainment date. See 57 FR 13506 (April 16, 1992) (the "General Preamble"). Under these requirements, for marginal ozone nonattainment areas, EPA reviewed air quality during the years 1991-1993 to determine whether the area met its attainment date.

II. Summary of Action

A. Determinations of Attainment

By this action, EPA is issuing a final rule that determinations under section 181(b)(2)(A) of whether an area attained the ozone NAAQS by its attainment date will be made on the basis of air quality monitoring data for the three-year period up to and including the attainment date. The air quality data relied on for these determinations must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance and recorded in EPA's

Aerometric Information Retrieval System (AIRS).

If this rule takes effect, future EPA determinations of whether an ozone nonattainment area attained the NAAQS by its attainment date will be made solely by reference to AIRS data. EPA would not be required to publish a **Federal Register** document concerning areas that attained the ozone NAAQS. EPA would continue to be required to publish a **Federal Register** document for areas that failed to attain the ozone NAAQS and that are subject to reclassification. However, this notice would be a final action not subject to notice and comment under the Administrative Procedures Act, 5 U.S.C. 553(b). Instead, EPA will invoke the "good cause" exemption from notice-and-comment rulemaking, under 5 U.S.C. 553(b)(B). The "good cause" exemption applies when the agency "for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." This exemption applies to merely ministerial actions, and EPA takes the position that a reclassification based on air quality data amounts to a ministerial action.

The system described above would fulfill the requirements of section 181(b)(2) of the Act. EPA intends to undertake the same system for making attainment determinations with respect to areas that are nonattainment for carbon monoxide (CO) under section 186(b)(2). By this action, EPA is issuing a final rule to this effect, which will be effective March 20, 1995 unless notice is received by February 16, 1995 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

B. Region III Nonattainment Areas

EPA is today determining that the Hampton Roads nonattainment area in Virginia failed to demonstrate attainment by its attainment date of November 15, 1993. The Hampton Roads ozone nonattainment area is comprised of Chesapeake, Hampton, James City County, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, Williamsburg, and York County in Virginia. This determination is based on air quality monitors revealing exceedances of the ozone NAAQS during the three year period 1991-1993.

In order to attain the NAAQS for ozone, each monitoring site in a nonattainment area must average no more than 1.0 expected exceedance of the standard (0.12 parts per million (ppm) ozone) per year in a three year

period. The number of expected exceedances is calculated by adjusting the number of actual monitored exceedances to account for missing data. Monitors in the Hampton Roads area in Virginia recorded eight exceedances of the ozone NAAQS in the three year period 1991 to 1993. In the Hampton Roads area, the Suffolk monitor (No. 51-800-0004) recorded five exceedances in that time period. Consequently, the average annual expected exceedances for the Hampton Roads area was 1.7 for the 1991-1993 period. The ozone data measured during that same period for this area indicates a design value of 0.131 parts per million (ppm).

Monitoring data in the Hampton Roads area for the 1992-1994 period indicates that the expected number of exceedances remains 1.7 and the design value remains 0.131 ppm ozone. Therefore, the area did not attain the NAAQS for ozone by November 15, 1993 and continues to violate the ozone standard. Pursuant to section 181 of the Act, EPA is required to reclassify (bump-up) the area to moderate.

This document fulfills EPA's obligations under section 181(b)(2) to determine whether the Hampton Roads, Virginia marginal ozone nonattainment area attained the ozone NAAQS by their attainment date, and to publish its determination in the **Federal Register**.

Under Section 182(i) of the Act, reclassifying the Hampton Roads, Virginia area to moderate means that the Commonwealth of Virginia will be required to submit State Implementation Plan (SIP) revisions for this area appropriate for moderate areas under section 182(b). Section 182(i) further provides that deadlines provided under the requirements of section 182(b) remain applicable to these areas, except that the Administrator (or the Administrator's delegate) "may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among required submissions." Accordingly, reclassification to moderate results in an attainment date for the Hampton Roads area of November 15, 1996 under section 181(a)(1) (table 1).

However, EPA is exercising its authority to adjust the SIP submission schedule for the moderate area controls. All SIP submissions required under section 182(b) must be submitted by November 15, 1995. All required controls and emission reductions must be implemented or achieved on a schedule that facilitates attainment by November 15, 1996 (the attainment date for marginal areas). This submittal date will assure consistency in SIP submittal

schedules and afford the States sufficient time to prepare the submittals, while also assuring that the required controls may be implemented by the attainment date. EPA cautions that because the determination of whether the areas attain the NAAQS by the end of 1996 must be based on air quality during the 1994–1996 period, the sooner the moderate controls are implemented, the more likely the area will reach attainment by the end of 1996.

In addition, this notice serves to announce EPA's determination that the Sussex, Delaware; Allentown-Bethlehem-Easton, Pennsylvania-New Jersey; Altoona, Pennsylvania; Erie, Pennsylvania; Harrisburg-Lebanon-Carlisle, Pennsylvania; Johnstown, Pennsylvania; Lancaster, Pennsylvania; Scranton-Wilkes-Barre, Pennsylvania; Youngstown-Warren-Sharon, Pennsylvania-Ohio; York, Pennsylvania; and Greenbrier, West Virginia marginal ozone nonattainment areas succeeded in demonstrating attainment of the ozone NAAQS by their attainment date of November 15, 1993. This determination is also based on ozone air quality data measured during the 1991–1993 period. All of these areas have average annual expected exceedances less than or equal to 1.0 for the 1991–1993 three year period.

Furthermore, EPA has determined that the Kent and Queen Anne's Counties area, Maryland did not attain the ozone standard by its attainment date, but has now attained the standard. During the 1991–1993 period, eight exceedances were monitored at the only monitoring site in the area, the Millington site (No. 24–029–0002). The average annual expected exceedances was 2.8 for the Kent and Queen Anne's areas in that period, and the design value was 0.133 ppm. However, data for the most recent three years period, 1992–1994, indicates that the area has now attained the ozone standard. Only two exceedance were recorded in that time period, making the average annual expected exceedances 0.66 and the ozone design value 0.121 ppm. (Because the ozone standard is 0.12 ppm ozone, design values ≤ 0.124 ppm, which are rounded off to ≤ 0.12 ppm, meet this standard. Design values ≥ 0.125 ppm do not meet the standard because they are rounded off to ≥ 0.13 ppm.) Since this area is no longer violating the ozone standard, reclassification to moderate is not warranted.

Although EPA has determined that the marginal nonattainment areas of Sussex County, DE; Kent and Queen Anne's Counties, MD; Allentown-Bethlehem-Easton, Altoona, Erie, Harrisburg-Lebanon-Carlisle,

Johnstown, Lancaster, Scranton-Wilkes-Barre, Youngstown-Warren-Sharon, and York areas, PA; and Greenbrier County, WV have attained the ozone NAAQS, they will continue to carry the designation of nonattainment and the classification of marginal. They are eligible to be redesignated to attainment under section 107(d)(3), if the criteria of that provision are met. A redesignation of an area to attainment must be a formal request by a State to EPA and include, among other things, a public hearing, all section 110 and part D requirements, and a ten year maintenance plan. EPA must review the request and follow the usual procedures of completeness review, a notice of proposed rulemaking, and a final action after reviewing public comments.

There was no ozone air quality monitoring in Smyth County, Virginia in the 1991–1993 period. Consequently, no determination can be made as to whether or not this area attained the ozone NAAQS. Therefore, EPA is taking no action in this notice regarding this nonattainment area. Smyth County's classification of marginal and rural transport will remain in place.

A detailed discussion of the air quality data used in EPA's attainment determinations is contained in the technical support document (TSD) prepared for this action. Copies of the TSD are available from the EPA Regional office listed in the ADDRESSES section of this document.

Final Action

In this action, EPA is promulgating a reclassification to moderate for the Hampton Roads, Virginia nonattainment area. Also in this action, EPA is notifying the public that future EPA determinations of whether an ozone nonattainment area attained the NAAQS by its attainment date will be made solely by reference to the AIRS data. EPA would not be required to publish a **Federal Register** notice concerning areas that attained the ozone NAAQS. Finally, this action serves to notify the public that the marginal nonattainment areas of Sussex County in Delaware; Kent and Queen Anne's Counties in Maryland; Allentown-Bethlehem-Easton, Altoona, Erie, Harrisburg-Lebanon-Carlisle, Johnstown, Lancaster, Scranton-Wilkes-Barre, Youngstown-Warren-Sharon, and York areas in Pennsylvania; and Greenbrier County in West Virginia have attained the ozone NAAQS. These areas will continue to carry the designation of nonattainment and the classification of marginal. These areas are eligible to be redesignated to attainment under section 107(d)(3) of

the Act, if the criteria of that provision are met.

This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective 60 days from date of this **Federal Register** document. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 20, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607(b)(2).]

Under E.O. 12291, EPA is required to judge whether an action is "major" and therefore subject to the requirement of a regulatory impact analysis. The Agency has determined that the reclassification made final today would result in none of the significant adverse economic effects set forth in section 1(b) of the E.O. as grounds for a finding that an action is "major." The Agency has, therefore, concluded that this action is not a "major" action under E.O. 12291.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Reclassifications of nonattainment areas under section 181 of the Act do not, by themselves, create any new requirements. Therefore, because this action does not impose any new requirements, I certify that it does not have a significant impact on small

entities. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

By action dated December 20, 1994, the EPA Administrator delegated to the Regional Administrators the authority to determine whether ozone nonattainment areas attained the NAAQS. The Office of Management and Budget has exempted this action from

review under Executive Order 12866. The Regional Administrator's decision to reclassify the Hampton Roads ozone nonattainment area from marginal to moderate is based on whether it has attained the NAAQS by its attainment date, pursuant to section 181 of the Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: January 5, 1995.

Peter H. Kostmayer,
Regional Administrator.

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. 7401-7671q.

2. In § 81.347 the "Virginia-Ozone" table is amended by revising the entry for "Norfolk-Virginia Beach-Newport News (Hampton Roads) Area" and all of the subentries to read as follows:

§ 81.347 Virginia.

* * * * *

VIRGINIA—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Norfolk-Virginia Beach-Newport News (Hampton Roads) Area:				
Chesapeake	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Hampton	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
James City County	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Newport News	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Norfolk	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Poquoson	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Portsmouth	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Suffolk	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Virginia Beach	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
Williamsburg	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
York County	1/6/92	Nonattainment	Mar. 20, 1995 ²	Moderate.
*	*	*	*	*

¹ This date is November 15, 1990, unless otherwise noted.

² However, the effective date is November 15, 1990 for the purposes of determining the scope of a "covered area" under section 211(k)(10)(D), opt-in under section 211(k)(6), and the baseline determination of the 15% reduction in volatile organic compounds under section 182(b)(1).

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40 CFR Parts 52 and 81

[TN 132-1-6787; FRL-5133-7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On November 12, 1992, the State of Tennessee through the Memphis and Shelby County Health Department (MSCHD), submitted a maintenance plan and a request to redesignate the Memphis and Shelby County area (classified as a marginal nonattainment area) from nonattainment to attainment for ozone (O₃). The O₃

nonattainment area specifically consists of Shelby County. Under the Clean Air Act as amended in 1990 (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA for redesignations. In this action, EPA is approving the State of Tennessee's submittal because it meets the maintenance plan and redesignation requirements. The approved maintenance plan will become a federally enforceable part of the SIP for the Memphis and Shelby County area.

On January 15, 1993, in a letter from Patrick M. Tobin to Governor Ned McWherter, the EPA notified the State of Tennessee that the EPA had made a finding of failure to submit required programs for the nonattainment area. EPA's redesignation of the Memphis and Shelby County area to attainment abrogates those requirements for this area.

EFFECTIVE DATE: This final rule is effective February 16, 1995.

ADDRESSES: Copies of the redesignation request and the State of Tennessee's submittal are available for public review during normal business hours at the following locations. EPA's technical support document (TSD) is available for public review during normal business hours at the EPA addresses listed below.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4, Air Programs Branch, 345 Courtland Street NE, Atlanta, GA 30365.

Memphis and Shelby County Health Department, 814 Jefferson Avenue, Memphis, Tennessee 38105.