

1990 base year emission inventory for the Providence ozone nonattainment area on January 12, 1993 as a revision to the State Implementation Plan (SIP). The 1990 base year emission inventory requirement of section 182(a)(1) of the Clean Air Act, as amended in 1990, has been satisfied for this area.

(b) The inventory is for the ozone precursors which are volatile organic compounds, nitrogen oxides, and carbon monoxide. The inventory covers point, area, non-road mobile, on-road mobile, and biogenic sources.

(c) The Providence nonattainment area is classified as serious and includes the entire state of Rhode Island.

3. Section 52.2070 is amended by adding paragraph (c)(46) to read as follows:

§ 52.2070 Identification of plan.

(c) * * *

(46) A revision to the Rhode Island SIP regarding ozone monitoring. The State of Rhode Island will modify its SLAMS and its NAMS monitoring systems to include a PAMS network design and establish monitoring sites. The State's SIP revision satisfies 40 CFR 58.20(f) PAMS requirements.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental

Management dated January 14, 1994 submitting an amendment to the Rhode Island State Implementation Plan.

(B) Letter from the Rhode Island Department of Environmental Management dated June 14, 1994 submitting an amendment to the Rhode Island State Implementation Plan.

(C) Section VII of the Rhode Island State Implementation Plan, Ambient Air Quality Monitoring.

4. Section 52.2070 is amended by adding paragraph (c)(47) to read as follows:

§ 52.2070 Identification of plan.

(c) * * *

(47) Revisions to the State Implementation Plan submitted by the Rhode Island Department of Environmental Management on March 15, 1994.

(i) Incorporation by reference.

(A) Letter from the Rhode Island Department of Environmental Management dated March 15, 1994 submitting revisions to the Rhode Island State Implementation Plan.

(B) The following portions of the Rules Governing the Control of Air Pollution for the State of Rhode Island, with the exception of Section 31.2.2, effective 90 days after the date that EPA notifies Rhode Island that the State has failed to achieve a 15% reduction of

VOC emission from the 1990 emission levels, in accordance with the contingency measure provisions of the Rhode Island SIP, (except for Section 31.5.2, which requires records of amount of product sold, beginning July, 1994.): Air Pollution Control Regulation No. 31, Control of Volatile Organic Compounds from Commercial and Consumer Products.

(C) The following portions of the Rules Governing the Control of Air Pollution for the State of Rhode Island, with the exception of Section 33.2.2, effective 90 days after the date that EPA notifies Rhode Island the State has failed to achieve a 15% reduction of VOC emission from the 1990 emission levels, in accordance with the contingency measure provisions of the Rhode Island SIP, (except for Section 33.5.2, which requires records of amount of product sold, beginning July, 1994.): Air Pollution Control Regulation No. 33, Control of Volatile Organic Compounds from Architectural and Industrial Maintenance Coatings.

5. In § 52.2081 Table 52.2081 is amended by adding new citations for 31 and 33 in numerical order to read as follows: § 52.2081—EPA—approved Rhode Island state regulations.

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TABLE 52.2081—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/subject	Date adopted by State	Date approved by EPA	FR citation	52.2070	Comments/Unapproved sections
No. 31	Consumer and Commercial Products.	March 11, 1994	October 30, 1996	[Insert FR citation from publication date].	c (47)	VOC control reg. submitted as part of State's Contingency Plan. Section 31.2.2 not approved.
No. 33	Architectural and Industrial Maintenance Coatings.	March 11, 1994	October 30, 1996	[Insert FR citation from publication date].	c (47)	VOC control reg. submitted as part of State's Contingency Plan Section 33.2.2 not approved.

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40 CFR Parts 52 and 81

[TN 152-1-9703; FRL-5639-2]

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 14, 1994, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted a maintenance plan and a request to redesignate the Middle Tennessee (Nashville) area from moderate nonattainment to attainment for ozone (O₃). Subsequently on August 9, 1995, and January 19, 1996, the State submitted supplementary information which included revised contingency measures and emission projections. The Nashville O₃ nonattainment area consists of Davidson, Rutherford,

Sumner, Williamson, and Wilson Counties. Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes. On June 24, 1996, EPA published a document proposing approval of the maintenance plan and redesignation request. EPA received a number of comments regarding the proposed rule. Those comments and the response thereto are summarized in the supplementary information that follows. 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 Tennessee's State Implementation Plan (SIP) for the Nashville area. EPA is also approving the State of Tennessee's 1990 baseline emissions inventory and 1994 base year emissions inventory because both meet EPA's requirements regarding the approval of baseline emission inventories.

EFFECTIVE DATE: This final rule is effective October 30, 1996.

ADDRESSES: Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency,
Region 4 Air Planning Branch, 100
Alabama Street SW, Atlanta, Georgia
30303.

Tennessee Department of Environment
and Conservation, 9th Floor, L & C
Annex, 401 Church Street, Nashville,
Tennessee 37243-1531.

Bureau of Environmental Health
Services, Metropolitan Health
Department, 311-23rd Avenue, North,
Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT:
Steven M. Scofield, Regulatory Planning
Section, Air Planning Branch, Air,
Pesticides & Toxics Management
Division, Region 4 Environmental
Protection Agency, 100 Alabama Street
SW, Atlanta, Georgia 30303. The
telephone number is 404/562-9034.
Reference file TN-152-1-9703.

SUPPLEMENTARY INFORMATION: On
November 15, 1990, the Clean Air Act
Amendments of 1990 were enacted.
(Pub. L. 101-549, 104 Stat. 2399,
codified at 42 U.S.C. 7401-7671q).
Under section 107(d)(1)(C), EPA
designated the Nashville area as
nonattainment by operation of law with
respect to O₃ because the area was
designated nonattainment immediately
before November 15, 1990. The area was
classified as moderate.

The moderate nonattainment area
more recently has ambient monitoring
data that show no violations of the O₃
National Ambient Air Quality Standard
(NAAQS), during the period from 1992
through 1995. Therefore, in an effort to
comply with the CAA and to ensure
continued attainment of the NAAQS, on
November 14, 1994, the State of

Tennessee submitted an O₃ maintenance
plan and requested redesignation of the
area to attainment with respect to the O₃
NAAQS. On March 13, 1995, Region 4
determined that the information
received from the State constituted a
complete redesignation request under
the general completeness criteria of 40
CFR part 51, appendix V, sections 2.1
and 2.2. Subsequently, on August 9,
1995, and January 19, 1996, the State
submitted supplementary information
which included revised contingency
measures and emission projections.

The Tennessee redesignation request
for the Nashville moderate O₃
nonattainment area meets the five
requirements of section 107(d)(3)(E) for
redesignation to attainment. The
following is a brief description of how
the State of Tennessee has fulfilled each
of these requirements. Because the
maintenance plan is a critical element of
the redesignation request, EPA will
discuss its evaluation of the
maintenance plan under its analysis of
the redesignation request.

1. The Area Must Have Attained the O₃ NAAQS

The State of Tennessee's request is
based on an analysis of quality assured
ambient air quality monitoring data,
which is relevant to the maintenance
plan and to the redesignation request.
Most recent ambient air quality
monitoring data from calendar year
1992 to date in 1996 demonstrates
attainment of the standard. The State of
Tennessee has committed to continue
monitoring the moderate nonattainment
area in accordance with 40 CFR part 58.
Therefore, the State has met this
requirement. For detailed information
refer to the proposal document
published June 24, 1996 (61 FR 32386).

2. The Area Has Met All Applicable Requirements Under Section 110 and Part D of the CAA

EPA has reviewed the Tennessee SIP
and ensures that it contains all measures
due under the amended CAA prior to or
at the time the State of Tennessee
submitted its redesignation request. For
detailed information regarding
applicable requirements, refer to the
proposal document.

EPA has determined that the section
172(c)(2) reasonable further progress
(RFP) requirement (with parallel
requirements for a moderate ozone
nonattainment area under subpart 2 of
part D, due November 15, 1993) was not
applicable as the State of Tennessee
submitted this redesignation request on
November 14, 1994, which
demonstrated that the Nashville area
was monitoring attainment of the O₃

standard. EPA determined on June 22,
1995, effective August 7, 1995, that the
Nashville area had attained the O₃
standard and that RFP and 15 percent
plan requirements do not apply to the
area for so long as the area does not
monitor any violations of the O₃
standard.

A. Section 182(a)(1)—Emissions Inventory

Tennessee has met this requirement.
This document gives final approval of
the 1990 baseline emissions inventory.
For detailed information regarding this
requirement, refer to the proposal
document.

B. Section 182(a)(2), 182(b)(2)— Reasonably Available Control Technology (RACT)

As stated in the proposal document,
Tennessee had met all RACT
requirements except for those in section
182(b)(2), RACT Catch-ups. Tennessee
submitted SIP revisions to correct
deficiencies in the VOC regulations to
EPA on February 21, 1995, February 8,
1996, February 23, 1996, April 22, 1996,
and April 25, 1996. The approval of
these SIP revisions was published in the
Federal Register on July 18, 1996 (61 FR
37387), and was effective September 16,
1996. For detailed information regarding
this requirement, refer to the proposal
document.

C. Section 182(a)(3)—Emissions Statements

Revisions to Tennessee's emissions
statements were included in the
submittals addressing the RACT Catch-
ups. The approval of these SIP revisions
was published in the Federal Register
on July 18, 1996 (61 FR 37387), and was
effective September 16, 1996. For
detailed information regarding this
requirement, refer to the proposal
document.

D. Section 182(b)(1)—15% Progress Plans

The State of Tennessee submitted this
redesignation request on November 14,
1994, which demonstrated that the
Nashville area was monitoring
attainment of the O₃ standard. EPA
determined on June 22, 1995, effective
August 7, 1995, that the Nashville area
had attained the O₃ standard and that
RFP and 15 percent plan requirements
do not apply to the area for so long as
the area does not monitor any violations
of the O₃ standard. For detailed
information regarding this requirement,
refer to the proposal document.

E. Section 182(b)(1)—New Source Review (NSR)

Tennessee has a fully approved NSR program for moderate O₃ nonattainment areas.

Tennessee submitted revisions to its prevention of significant deterioration (PSD) rule on September 1, 1993, and June 10, 1996. The approval of these SIP revisions was published in the Federal Register on July 29, 1996 (61 FR 39332), and was effective September 12, 1996. For detailed information regarding this requirement, refer to the proposal document.

F. Section 182(b)(3)—Stage II

On January 24, 1994, EPA promulgated the on board vapor recovery (OBVR) rule, and section 202(a)(6) of the CAA provides that once the rule is promulgated, moderate areas are no longer required to implement Stage II. Thus, the Stage II vapor recovery requirement of section 182(b)(3) is no longer an applicable requirement. However, Tennessee submitted Stage II vapor recovery rules to EPA which were approved on February 9, 1995 (60 FR 7713), with an effective date of April 10, 1995. For detailed information regarding this requirement, refer to the proposal document.

G. Section 182(b)(4)—Motor Vehicle Inspection and Maintenance (I/M)

The CAA required all moderate and above areas to revise the SIP to include provisions necessary to provide for a vehicle inspection and maintenance (I/M) program. The State has the required legal authority for I/M, and EPA approved the program on July 28, 1995 (60 FR 38694), with an effective date of September 26, 1995. For detailed information regarding this requirement, refer to the proposal document.

H. Section 182(f)—Oxides of Nitrogen (NO_x) Requirements

Tennessee submitted a request for an exemption from the 182(f) requirements on March 21, 1995. In addition, NO_x reductions were obtained from two sources prior to the Nashville area attaining the O₃ standard. The State submitted these permits for approval on May 31, 1996. The approval of these SIP revisions was published in the Federal Register and will be effective prior to the effective date of this action. For detailed information regarding this requirement, refer to the proposal document.

3. The Area Has a Fully Approved SIP Under Section 110(k) of the CAA

Based on the approval of provisions under the pre-amended CAA and EPA's prior approval of SIP revisions under the amended CAA, EPA has determined that Tennessee has a fully approved O₃ SIP under section 110(k).

4. The Air Quality Improvement Must Be Permanent and Enforceable

Several control measures have come into place since the Nashville nonattainment area violated the O₃ NAAQS. Of these control measures, the reduction of fuel volatility to 9.5 psi in 1989, and finally to 7.8 psi beginning with the summer of 1992, as measured by the Reid Vapor Pressure (RVP), and fleet turnover due to the Federal Motor Vehicle Control Program (FMVCP) produced the most significant decreases in VOC emissions. The reduction in VOC emissions due to the mobile source regulations from 1990 to 1994 was 27.14 tons per day (28.6%). The VOC emissions in the base year are not artificially low due to local economic downturn.

5. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for

areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

In this document, EPA is approving the State of Tennessee's maintenance plan for the Nashville nonattainment area because EPA finds that Tennessee's submittal meets the requirements of section 175A.

A. Emissions Inventory—Base Year Inventory

On November 15, 1993, the State of Tennessee submitted comprehensive inventories of VOC, NO_x, and CO emissions from the Nashville area. The inventories include biogenic, area, stationary, and mobile sources for 1990.

The State submittal contains the detailed inventory data and summaries by county and source category. Finally, this inventory was prepared in accordance with EPA guidance. However, Tennessee had not attained the O₃ standard during 1990. Therefore, 1994 will be used as the base year for this redesignation. This document approves the 1990 baseline inventory and the 1994 base year inventory for the Nashville area. A summary of the 1990 baseline inventories as well as the 1994 base year and projected maintenance year inventories is included in this document.

SUMMARY OF VOC EMISSIONS
[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	45.87	41.48	38.34	40.98	43.60	47.08
Area	67.67	50.46	43.91	46.11	48.31	51.24
Non-Road	27.83	28.74	29.09	29.39	29.68	30.08
Mobile	94.77	67.63	56.27	53.43	52.90	53.17
Total	263.14	188.31	167.61	169.91	174.49	181.57

SUMMARY OF NO_x EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	111.79	124.96	73.45	78.99	84.50	94.25
Area	15.12	14.56	15.03	15.78	16.54	17.54
Non-Road	29.24	30.19	30.67	31.44	32.20	33.22
Mobile	111.34	120.53	102.20	98.79	96.25	96.60
Total	267.49	290.24	221.35	225.00	229.31	241.61

SUMMARY OF CO EMISSIONS

[Tons per day]

	1990	1994	1996	1999	2002	2006
Point	20.43	21.54	22.12	23.13	24.13	25.43
Area	35.94	11.75	16.97	17.48	18.00	18.68
Non-Road	188.69	194.80	197.93	202.86	207.78	214.35
Mobile	720.68	614.24	458.63	413.08	401.31	407.97
Total	965.74	842.33	695.65	656.55	651.22	666.43

*B. Demonstration of Maintenance—
Projected Inventories*

Total VOC and NO_x emissions were projected from 1990 out to 2006, with interim years of 1994, 1996, 1999, and 2002. These projected inventories were prepared in accordance with EPA guidance. The projections show that VOC and NO_x emissions are not expected to exceed the level of the base year inventory during this time period.

C. Verification of Continued Attainment

Continued attainment of the O₃ NAAQS in the Nashville area depends, in part, on the State's efforts toward tracking indicators of continued attainment during the maintenance period. The State has also committed to complete periodic inventories of VOC and NO_x emissions every five years. The contingency plan for the Nashville area is triggered by three indicators; a violation of the O₃ NAAQS, the monitored ambient levels of O₃ exceed 0.12 parts per million (ppm) more than once in any year at any site in the nonattainment area, or the level of total VOC or NO_x emissions has increased above the attainment level in 1994 by ten percent or more.

D. Contingency Plan

The level of VOC and NO_x emissions in the Nashville area will largely determine its ability to stay in compliance with the O₃ NAAQS in the future. Despite the State's best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, Tennessee has provided contingency measures with a schedule for implementation in the

event of a future O₃ air quality problem. In the case of a violation of the O₃ NAAQS, the plan contains a contingency to implement additional control measures such as lower Reid Vapor Pressure for gasoline, lowering the threshold of applicability for major stationary VOC and NO_x sources from 100 tons per year (tpy) to 50 tpy, and application of RACT on sources covered by new CTG categories. Any additional measures taken by Tennessee will be implemented within 18 months of the trigger date. A complete description of these contingency measures and their triggers can be found in the State's submittal. EPA finds that the contingency measures provided in the State submittal meet the requirements of section 175A(d) of the CAA.

E. Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, the State of Tennessee has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years.

On June 24, 1996, EPA published a document proposing approval of the maintenance plan and redesignation request (61 FR 32386). EPA received a number of comments regarding the proposed rule. Those comments and the response thereto are summarized below.

Comment #1—The commenter disagreed that the State had met all of the requirements in section 107(d)(3)(E)(ii) and requested that all of the SIP requirements in section 107(d)(3)(E)(ii) be approved prior to the comment period on the redesignation.

Response—Section 107(d)(3)(E) stipulates that a redesignation of a nonattainment area to attainment may not be promulgated unless conditions (i) through (v) have been met. In the proposed rule published on June 24, 1996 (61 FR 32386), EPA did not promulgate the redesignation to attainment. The proposed rule clearly specifies that EPA will not take final action on the redesignation until the Tennessee SIP has been fully approved. Each of the actions approving the various SIP revisions have their own comment period during which the public may review and comment on those specific actions. As of this action, the State has submitted all of the requirements in section 107(d)(3)(E)(ii) and the EPA has approved each requirement.

Comment #2—The commenter requested that EPA provide the legal basis for the interpretation that only those requirements which came due prior to the State's request for redesignation must be met in order for the redesignation to be approved.

Response—Under the criterion contained in section 107(d)(3)(E)(ii), an area seeking redesignation must have a SIP that has been fully approved by the Administrator. EPA has interpreted this requirement to mean that there has been satisfactory completion of the Act's then current requirements at the time of the redesignation submittal. This interpretation is discussed in a memorandum dated September 17, 1993 from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, entitled 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.

In particular, before EPA can act favorably upon any State redesignation request, the State must adopt statutorily-mandated control programs of Section 110 and Part D that were due prior to the time of the redesignation request. This interpretation makes clear what requirements a State must meet at the time of its redesignation submittal, and avoids the necessity of States continually resubmitting their request as more SIP requirements come due. In certain instances where a mandated requirement has come due, but has not yet been approved into the SIP, the State may submit the missing plan for approval with the redesignation request, and EPA must approve the plan submitted before it can act on the redesignation request. This circumstance includes submittal of a NO_x waiver pursuant to Section 182(f) of the Act. This issue is discussed in Section II: Policy Summary, and Section IV: Coordination of SIP Submittals and Redesignation Request, in the above-cited memorandum.

Comment #3—The commenter stated that EPA does not have the discretion to conditionally approve the redesignation, that conditional approval would not only be a misinterpretation of the use of conditional approvals, but also a violation of the Administrative Procedures Act.

Response—In the proposed rule published on June 24, 1996 (61 FR 32386), EPA did not conditionally approve any elements of the redesignation. The EPA proposed to approve the redesignation with no conditions specified. The document did state that final action would not be taken prior to final SIP approval. However, that does not constitute conditional approval. There will be no outstanding approvals at the time of final action.

Comment #4—The commenter requested that EPA extend the comment period until final approval of all of the requirements on which approval of the redesignation is contingent, or issue another public notice once the SIP is complete.

Response—As stated above, each of the actions approving the various SIP revisions (on which approval of the redesignation is contingent) have their own comment period during which the public may review and comment on those specific actions. EPA believes that the 30 day comment period for the proposed rule satisfies the requirements

of the Administrative Procedures Act (5 U.S.C.A. § 553) and has provided the public adequate time in which to make comments. EPA denies the request to extend the comment period and denies the request to institute a second comment period on this action.

Comment #5—The commenter requested that more detail be provided on the contingency plan, and that the plan was brief and vague.

Response—Some detail has been added to EPA's discussion of its evaluation of the measures in Tennessee's contingency plan; however, only EPA's evaluation of the plan is included in this Federal Register notice. The contingency plan may be found in its entirety in the maintenance plan submitted by the State.

Comment #6—The commenter stated that it is premature to ask the public to comment on the redesignation when the NO_x exemption is being considered. Also, the commenter opposed EPA's redesignation since it is contingent on approval of a NO_x exemption which was done through direct final procedures for noncontroversial actions. The commenter asserted that since other actions similar to the Tennessee NO_x exemption had raised extensive public comment, the TN action was inappropriate.

Response—EPA believes that while the actions such as the NO_x exemption are related to the redesignation, these actions may proceed concurrently with the redesignation, as long as action on all of the SIP revisions on which approval of the redesignation is contingent are effective prior to or concurrent with the effective date of the redesignation. EPA does not agree that all NO_x exemptions are controversial because adverse comments were raised regarding similar *individual* NO_x exemptions. In fact, despite adverse comments, a number of NO_x exemptions have been granted and are in place as of this writing.

Comment #7—The commenter stated that, through inconsistent EPA policy, upwind states have been allowed to redesignate areas and obtain exemptions from NO_x and VOC programs required by the CAA without regard to the effects of these actions on downwind areas.

Response—Section 107(d)(3)(E) does not require a submission of a redesignation by a state to address the effects of that action and related NO_x and VOC programs on "downwind" areas. Moreover, EPA does not believe that allowing a NO_x exemption in the Nashville area will affect attainment or maintenance of the ambient standard for ozone in other states.

Comment #8—The commenter stated that EPA's "clean data" policy fails in that it does not address the long range transport of ozone. Also stated is that since several other ozone areas were redesignated and subsequently violated the ozone NAAQS, the maintenance plans for these areas do not contain adequate control programs and contingency measures, and that additional programs will be needed in Nashville as well.

Response—As stated above, section 107(d)(3)(E) does not require a submission of a redesignation by a state to address the long range transport of ozone, and EPA does not believe that this redesignation will affect long range ozone transport. The Nashville area has ambient monitoring data that show no violations of the ozone standard during the period from 1992 to date in 1996. EPA has determined that the maintenance plan and contingency measures for the Nashville area are adequate.

Comment #9—The commenter stated that, since the NO_x exemption was submitted after the request for redesignation, TN should have already had a NO_x RACT program in place at the time of the request for redesignation, and that a 15% rate of progress plan should have been submitted after the initial submission was found incomplete. Finally, the commenter stated that the redesignation and NO_x exemption should not be granted and urged EPA to reverse the notices on these actions.

Response—Tennessee had existing NO_x controls in effect during the attainment period, prior to the request for redesignation. EPA subsequently determined that the Nashville area had attained the standard (60 FR 32466, June 22, 1995), therefore additional NO_x controls were not needed to attain the ozone standard. In addition, EPA determined that RFP and 15% plan requirements do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1). The State submitted the redesignation on November 14, 1994, and EPA determined the submittal complete in a letter dated March 13, 1995. Due to the reasons stated above, EPA believes the actions regarding the redesignation and NO_x exemption are warranted.

Comment #10—The commenter requested that EPA deny the redesignation request until more information is available, including the results of the Southern Oxidant Study, since the area came close to having an exceedance last summer and the standard may be violated by the time the designation process is concluded. The commenter also asserted that, since there is scientific consensus that the current standard is not stringent enough to protect public health, and EPA intends to propose a tighter ozone standard, the area should not be reclassified.

Response—As stated in the response to comment 8, this action is based on ambient monitoring data that show no violations of the ozone NAAQS during the period from 1992 to date in 1996. Other information, such as results of the Southern Oxidant Study, is not relevant to the ozone redesignation. Regardless of occurrences of exceedances or near-exceedances, the Nashville area has attained the ozone standard. As of this action, the ozone standard is under review as to adequacy in protecting public health. Since the standard has not been revised, only attainment of the current standard has been evaluated for this redesignation.

Comment #11—The commenter expressed concern that redesignating the area would send the wrong message to the public, which would be to assume that the problem had been solved.

Response—EPA believes that the maintenance plan is adequate to maintain the ozone standard in the Nashville area, and redesignating the area to attainment is appropriate and accurately reflects the status of air quality concerning the current ozone NAAQS in the Nashville area.

Comment #12—The commenter disputed the inapplicability of reasonable further progress and 15% plan requirements; the commenter stated that EPA's determination exceeds its discretionary regulatory authority to modify specific statutory requirements.

Response—EPA does not believe that this determination modifies any specific statutory requirements. The purpose of the RFP (including 15% plan) requirement is to ensure attainment of the ozone standard by the attainment date applicable under the CAA. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled, thereby meeting the statutory requirement, and EPA does not believe that the area need submit revisions providing for further emissions reductions.

Comment #13—The commenter had serious reservations as to the adequacy of EPA's conclusion that the TN SIP satisfies the requirements of Section 110(a)(2) of the CAA, given the unresolved status of the revisions on which the redesignation is contingent described in the proposal. The commenter believes a more thorough evaluation of the SIP by EPA is warranted prior to any further consideration of the redesignation.

Response—As stated in the response to comment 1, section 107(d)(3)(E) stipulates that a redesignation of a nonattainment area to attainment may not be promulgated unless conditions (i) through (v) have been met; in the proposed rule, the redesignation was not promulgated. As of this final action, the State has met all of the requirements in section 107(d)(3)(E)(ii). EPA believes, as previously stated, that the State has met all of the requirements in section 107(d)(3)(E), including all requirements applicable to the area under section 110. The evaluation of the Tennessee SIP is described in detail in section 2 of the supplementary information in the proposed rule.

Comment #14—The commenter took exception to the use of EPA's diluted redesignation guidance (Seitz memo, May 10, 1995). They further state that most EPA guidance includes procedural devices facilitating redesignation requests by suspending requirements of SIP revisions, which is inconsistent with section 107(D)(3)(E). The commenter also asserts that EPA cannot use the 1995 Seitz memorandum to substitute its own criteria for redesignation over congressional instruction.

Response—EPA does not believe that the 1995 Seitz memorandum is being used to substitute EPA's own criteria for redesignation over congressional instruction. The memorandum sets forth EPA policy to address whether areas must submit SIP revisions concerning requirements necessary to attain the ozone standard once an area has attained the standard. As stated in the response to comment 12, if an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled, thereby meeting the statutory requirement, and EPA does not believe that the area need submit revisions providing for further emissions reductions as long as the area continues to meet the standard. EPA does not believe that this policy is inconsistent with section 107(D)(3)(E).

Comment #15—The commenter stated that utilizing the 1995 Seitz memorandum to render inapplicable CAA sections 172(c)(2) and 182(b)(1)

requirements jeopardizes the Nashville request by making it susceptible to revocation if subjected to judicial review.

Response—EPA has not utilized the 1995 Seitz memorandum to render CAA sections 172(c)(2) and 182(b)(1) requirements inapplicable; the memorandum determines that if the purpose of a requirement has already been fulfilled, the statutory requirement has been met, and the area need not submit further SIP revisions regarding a requirement that has been fulfilled.

Comment #16—The commenter stated that they believe that it is in the best interests of the Nashville region that EPA stay action on redesignation requests for ozone nonattainment areas in the states participating in OTAG until regional ozone precursor emission strategies are proposed and implemented, and the same should apply to NO_x waivers in the OTAG domain.

Response—Section 107(D)(3)(E) does not provide for incorporating OTAG strategies in redesignations, nor does section 182(f) for NO_x exemptions. EPA believes the Tennessee request has met all of the requirements in section 107(D)(3)(E) and is approving the redesignation in this final action.

Final Action

In this final action, EPA is approving the Nashville O₃ maintenance plan, including the 1990 baseline inventory and the 1994 base year inventory, because it meets the requirements of section 175A. In addition, EPA is redesignating the Nashville area to attainment for O₃ because the State of Tennessee has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation. EPA believes all comments received have been adequately addressed and is therefore proceeding with approval of this action.

The O₃ SIP is designed to satisfy the requirements of part D of the CAA and to provide for attainment and maintenance of the O₃ NAAQS. This final redesignation should not be interpreted as authorizing the State of Tennessee to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved O₃ SIP. Changes to O₃ SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in a finding of nonimplementation [section 179(a) of

the CAA] or in a SIP deficiency call made pursuant to sections 110(a)(2)(H) and 110(k) of the CAA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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. Sections 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.

Granting the ozone redesignation makes less burdensome the requirements on those small entities in the Nashville area that are regulated under the State's ozone control plan. Accordingly, the Administrator hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that

achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted 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 General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

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 December 30, 1996. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: October 11, 1996.

John H. Hankinson, Jr.,
Regional Administrator.

Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(144) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(144) The maintenance plan and redesignation request for the Nashville Area which includes Davidson, Rutherford, Sumner, Williamson, and Wilson Counties submitted by the Tennessee Department of Environment and Conservation on November 14, 1994, August 9, 1995, and January 19, 1996, as part of the Tennessee SIP.

(i) Incorporation by reference.

The following sections of the document entitled Request for Redesignation of the Middle Tennessee Non-attainment Area from Moderate Non-attainment to Attainment of the National Ambient Air Quality Standard for Ozone and the Maintenance Plan: 2.0 Attainment Demonstration; 3.0 Maintenance Demonstration; 4.0 Contingency Plan; and Appendix 4 Summaries of Projected Emissions for VOC, NO_x, and CO adopted on January 10, 1996.

(ii) Other material. None.

PART 81—[AMENDED]

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

Authority: 42 U.S.C. 7401-7671q.

Subpart C—Section 107 Attainment Status Designations

2. In § 81.343, the "Tennessee-Ozone" table is amended by removing the Nashville area and its entries in the first alphabetical list and by adding in alphabetical order entries for "Davidson County", "Rutherford County", "Sumner County", "Williamson County", and "Wilson County" to the second listing of counties; and by revising the entry "Rest of State" to read "Statewide".

§ 81.343 Tennessee

* * * * *

TENNESSEE—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Statewide	Unclassifiable/At-tainment.			
* * *	*	*	*	*
Davidson County	Oct. 30, 1996.			
* * *	*	*	*	*
Rutherford County	Oct. 30, 1996.			
* * *	*	*	*	*
Sumner County	Oct. 30, 1996.			
* * *	*	*	*	*
Williamson County	Oct. 30, 1996.			
* * *	*	*	*	*
Wilson County	Oct. 30, 1996.			
* * *	*	*	*	*

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

[FR Doc. 96-27606 Filed 10-29-96; 8:45 am]
 BILLING CODE 6560-50-P

40 CFR Part 70

[AD-FRL-5642-1]

Clean Air Act Final Interim Approval of Operating Permits Program; Arizona; Direct Final Interim Approval of Operating Permits Program; Pinal County Air Quality Control District, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final interim approval; direct final interim approval.

SUMMARY: The EPA is promulgating interim approval of the Operating Permits Program submitted by the State of Arizona, which comprises programs from the Arizona Department of Environmental Quality (ADEQ), the Maricopa County Environmental Services Department, (Maricopa), the Pima County Department of Environmental Quality (Pima), and the Pinal County Air Quality Control District (Pinal) for the purpose of complying with federal requirements for an approvable state program to issue operating permits to all major stationary sources, and to certain other sources. The EPA is also taking direct final action to promulgate interim approval of specified portions of the Pinal County Operating Permits Program submitted by ADEQ on behalf of Pinal County on August 15, 1995. These specified portions of the program reflect changes to the permitting regulation that was

part of Pinal's original program submittal.

DATES: The final interim approval of the Arizona program is effective on November 29, 1996. The direct final interim approval of the specified portions of the Pinal County program as codified in paragraph (d)(2) of the Arizona entry of Appendix A to part 70, is effective on December 30, 1996 unless adverse or critical comments are received by November 29, 1996. If the effective date is delayed, a timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State and county submittals and other supporting information used in developing the final interim approval and direct final interim approval are available for inspection (docket number AZ-95-1-OPS) during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (telephone 415-744-1251), Mail Code A-5-2, U.S. Environmental Protection Agency, Region IX, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

Title V of the 1990 Clean Air Act Amendments (sections 501-507 of the Clean Air Act ("the Act")), and implementing regulations at 40 Code of Federal Regulations (CFR) Part 70 require that states develop and submit

operating permits programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of Part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by 2 years after the November 15, 1993 date, or by the end of an interim program, it must establish and implement a federal program. On July 1, 1996, EPA promulgated the part 71 regulations that govern EPA's implementation of a federal operating permits program in a state or tribal jurisdiction. See 61 FR 34202. On July 31, 1996, EPA published a notice at 61 FR 39877 listing those states whose part 70 operating permits programs had not been approved by EPA and where a part 71 federal operating permit program was therefore effective. In that notice EPA stated that part 71 is effective in the State of Arizona. The EPA also stated its belief that it would promulgate interim approval of the Arizona part 70 program prior to the deadline for sources to submit permit applications under part 71. Today's action cancels the applicability of a part 71 federal operating permits program in Arizona in those areas under the jurisdiction of the State and county agencies. The part 71 application deadline contained in the July 31, 1996 notice is now superseded