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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the Atlanta area has not attained by its applicable attainment date, and to reclassify the Atlanta area as a moderate ozone nonattainment area and to adjust applicable deadlines.

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

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

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

Dated: October 9, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

[FR Doc. E7–20342 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

**[EPA–R04–OAR–2007–0959–200745; FRL–8482–3]**

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

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

**ACTION:** Proposed rule.

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

**DATES:** Comments must be received on or before November 15, 2007.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0959, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: spann.jane@epa.gov* or *riley.jeffrey@epa.gov.*

3. *Fax:* 404–562–9019 (Region 4) or 214–665–7263 (Region 6).

4. *Mail:* EPA–R04–OAR–2007–0959, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, or Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733.

5. *Hand Delivery or Courier:* Jane Spann, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960, or Jeffrey Riley, Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Such deliveries are only accepted during the Regional Offices' normal hours of operation. The Regional Offices' official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

*Instructions:* Direct your comments to Docket ID No. EPA–R04–OAR–2007–0959. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* 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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, 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 *www.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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

*Docket:* All documents in the electronic docket are listed in the *www.regulations.gov* index. 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 *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960 or the Air Planning Section, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. EPA requests that if at all possible, you contact the persons listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

(Tennessee issues)—Jane Spann, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Phone: (404) 562–9029. E-mail: *spann.jane@epa.gov.*

(Arkansas issues)—Jeffrey Riley, Air Planning Section, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Phone: (214) 665–8542. E-mail: *riley.jeffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**



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

### *A. What Are the National Ambient Air Quality Standards?*

The CAA requires EPA to establish a NAAQS for pollutants that ''may reasonably be anticipated to endanger public health and welfare'' and to develop a primary and secondary standard for each NAAQS. The primary standard is designed to protect human health with an adequate margin of safety and the secondary standard is designed to protect public welfare and the environment. EPA has set NAAQS for six common air pollutants referred to as criteria pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. These standards present state and local governments with the air quality levels they must meet to comply with the CAA. Also, these standards allow the American people to assess whether the air quality in their communities is healthful.

### *B. What Is the Standard for 8-Hour Ozone?*

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 concentration 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.''

### *C. What Is a SIP and How Does It Relate to the NAAQS for 8-Hour Ozone?*

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. Each state must submit these regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP. Each federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### *D. What Is the Memphis TN–AR Nonattainment Area, and What Is its Current 8-Hour Ozone Nonattainment Classification?*

The Memphis TN–AR Nonattainment Area is located in both Western Tennessee and Northeastern Arkansas, and consists of Shelby County, Tennessee and Crittenden County, Arkansas, respectively. For areas subject to Subpart 2 of the CAA, such as the Memphis TN–AR Nonattainment Area, the maximum period for attainment runs from the effective date of designations and classifications for the 8-hour ozone NAAQS and will be the same period as provided in Table 1 of CAA Section 181(a): Marginal—3 years; Moderate—6 years; Serious—9 years; Severe—15 or 17 years; and Extreme—20 years. The Phase I Ozone Implementation Rule (April 30, 2004, 69 FR 23951) provides the classification scheme for the 8-hour ozone NAAQS (see, 40 CFR 51.903). The effective date of designations and classifications for the 8-hour ozone NAAQS was June 15, 2004 (April 30, 2004, 69 FR 23858).

The Memphis TN–AR Nonattainment Area was initially designated nonattainment for the 8-hour ozone standard on April 30, 2004, and classified as ''moderate'' based on a design value of .092 parts per million (ppm) with an attainment date of June 15, 2010 (April 30, 2004, 69 FR 23858). The design value of an area, which characterizes the severity of the air quality concern, is represented by the annual fourth-highest daily maximum 8-hour average ozone concentration measured at each monitor averaged over any three-year period. On July 15, 2004, pursuant to section 181(a)(4) of the CAA, the States of Tennessee and Arkansas submitted a petition to EPA Regions 4 and 6, requesting a downward reclassification of the Memphis TN–AR Nonattainment Area from ''moderate'' to ''marginal'' for the 8-hour ozone standard. The petition was based on the area's ''moderate'' design value of .092 ppm being within five percent of the maximum ''marginal'' design value of 0.091 ppm. Pursuant to Section 181(a)(4), areas with design values within five percent of the standard may request a reclassification under specific circumstances. Factors for EPA to consider as part of such a request are described in Section 181(a)(4) of the CAA. The petition for reclassification to ''marginal'' was approved by EPA, and became effective on November 22, 2004 (see, 69 FR 56697, September 22, 2004).

As a result of the downward classification, the new attainment date for the Memphis TN–AR ''marginal'' Nonattainment Area was set at June 15, 2007, consistent with the CAA.

*E. What Are the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications?*

Section 181(b)(2) prescribes the process for making determinations upon failure of an ozone nonattainment area to attain by its attainment date, and for reclassification of an ozone nonattainment area. Section 181(b)(2)(A) of the Act requires that EPA determine, based on the area's design value (as of the attainment date), whether the ozone nonattainment area attained the ozone standard by that date. For marginal and moderate areas, if EPA finds that the nonattainment area has failed to attain the ozone standard by the applicable attainment date, the area must be reclassified to the higher of (1) the next higher classification for the area, or (2) the classification applicable to the area's design value as determined at the time of the required **Federal Register** notice. Section 181(b)(2)(B) requires EPA to publish in the **Federal Register** a notice identifying any area that has failed to attain by its attainment date and the resulting reclassification. Different circumstances apply to severe and extreme areas.

## II. What Is EPA's Evaluation of the Memphis TN–AR Nonattainment Area's 8-Hour Ozone Data?

EPA makes attainment determinations for ozone nonattainment areas using available quality-assured air quality data. Within the Memphis TN–AR Nonattainment Area, ground-level ozone is measured at the Crittenden County monitor, which is located 10 miles northwest of downtown Memphis in Marion, Arkansas; at two monitors in Shelby County (Edmund Orgill Park and Frayser Street); and at one monitor located in the central part of DeSoto County, Mississippi. Although DeSoto County is not included in the Memphis TN–AR Nonattainment Area, its monitoring data is regularly considered for potential contributions to the Memphis TN–AR Nonattainment Area air shed. In recent years, the Marion monitor has measured some of the highest 8-hour average ozone concentrations in the Memphis TN–AR Nonattainment Area. For example, the fourth-highest daily maximum readings for 2004, 2005, and 2006 at the Marion monitor are .078, .096, and .089 ppm, respectively. The fourth-highest daily maximum readings for the Shelby County monitors are: .075, .081, and .084 ppm at the Edmund Orgill Park monitor, and .073, .082, and .083 ppm at the Frayser Street monitor. The fourth-highest daily maximum readings at the Hernando (DeSoto County) monitor are .080, .084, and .087 ppm. For the Memphis TN–AR Nonattainment Area, the attainment determination is based on 2004–2006 air quality data. The Area has a design value of .087 ppm. Therefore, pursuant to section 181(b)(2) of the CAA, the Memphis TN–AR Nonattainment Area did not attain the 8-hour ozone NAAQS by the June 15, 2007, deadline for marginal areas.

TABLE 1.—MEMPHIS TN–AR NONATTAINMENT AREA FOURTH HIGHEST 8-HOUR OZONE CONCENTRATIONS AND DESIGN VALUES (PPM) [1]

| Site | 4th highest daily max | | | Design value |
|---|---|---|---|---|
| | 2004 | 2005 | 2006 | 3 year average (2004–2006) |
| Marion, AR | 0.078 | 0.096 | 0.089 | 0.087 |
| Orgill Park, TN | 0.075 | 0.081 | 0.084 | 0.080 |
| Frayser, TN | 0.073 | 0.082 | 0.083 | 0.079 |
| Hernando, MS | 0.080 | 0.084 | 0.087 | 0.083 |

[1] Unlike for the 1-hour ozone standard, design value calculations for the 8-hour ozone standard are based on a rolling three-year average of the annual fourth highest values (40 CFR part 50, Appendix I).

Under Sections 172(a)(2)(C) and 181(a)(5) of the CAA, an area can qualify for up to two 1-year extensions of its attainment date based on the number of exceedances in the attainment year and whether the state has complied with all requirements and commitments pertaining to the area in the applicable SIP. For the 8-hour standard, if an area's fourth highest daily maximum 8-hour average in the attainment year is 0.084 ppm or less (see, 40 CFR 51.907), the area is eligible for up to two 1-year attainment date extensions. The attainment year is the year immediately preceding the nonattainment area's attainment date. For the Memphis TN–AR Nonattainment Area, the attainment year was 2006. In 2006, the fourth highest daily maximum 8-hour average value was 0.089 ppm. Based on this information, the Memphis TN–AR Nonattainment Area currently does not qualify for a 1-year extension of the attainment date.

Section 181(b)(2)(A) of the CAA provides that, when EPA finds that an area failed to attain by the applicable date, the area is reclassified by operation of law to the higher of: the next higher classification or the classification applicable to the area's ozone design value at the time of the required notice under Section 181(b)(2)(B). Section 181(b)(2)(B) requires EPA to publish a notice in the **Federal Register** identifying the reclassification status of an area that has failed to attain the standard by its attainment date. The classification that would be applicable to the Memphis TN–AR Nonattainment Area's ozone design value at the time of this notice is ''marginal'' because the area's 2006 calculated design value, based on quality-assured ozone monitoring data from 2004–2006, is 0.087 ppm. By contrast, the next higher classification for the Memphis TN–AR Nonattainment Area is ''moderate.'' Because ''moderate'' is a higher nonattainment classification than ''marginal'' under the CAA statutory scheme, upon the effective date of a final rulemaking, the Memphis TN–AR Nonattainment Area will be reclassified by operation of law as ''moderate,'' for failing to attain the standard by the marginal area applicable attainment date of June 15, 2007.

## III. What Action Is EPA Proposing?

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

Pursuant to section 181(b)(2), EPA is proposing to find that the Memphis TN–AR Nonattainment Area has failed to attain the 8-hour ozone NAAQS by the June 15, 2007, attainment deadline prescribed under the CAA for marginal ozone nonattainment areas. If EPA finalizes this finding and it takes effect, the Memphis TN–AR Nonattainment

Area shall be reclassified by operation of law from marginal nonattainment to moderate nonattainment. Moderate areas are required to attain the standard ''as expeditiously as practicable'' but no later than 6 years after designation or June 15, 2010. The ''as expeditiously as practicable'' attainment date will be determined as part of the action on the required SIP submittal demonstrating attainment of the 8-hour ozone standard. EPA is proposing a schedule by which Tennessee and Arkansas will submit the SIP revisions necessary for the proposed reclassification to moderate nonattainment of the 8-hour ozone standard.

*B. Proposed Date for Submitting a Revised SIP for the Memphis TN–AR Nonattainment Area*

EPA must address the schedule by which Tennessee and Arkansas are required to submit a revised SIP. When an area is reclassified, EPA has the authority under section 182(i) of the Act to adjust the Act's submittal deadlines for any new SIP revisions that are required as a result of the reclassification. Pursuant to 40 CFR 51.908(d), for each nonattainment area, a state must provide for implementation of all control measures needed for attainment no later than the beginning of the attainment year ozone season. The attainment year ozone season is the ozone season immediately preceding a nonattainment area's attainment date, in this case 2009 (40 CFR 51.900(g)). The ozone season is the ozone monitoring season as defined in 40 CFR part 58, Appendix D, section 4.1, Table D–3 (October 17, 2006, 71 FR 61236). For the purposes of this reclassification for the Memphis TN–AR Nonattainment Area, March 1st is the beginning of the ozone monitoring season. As a result, EPA proposes that the required SIP revision be submitted by both Tennessee and Arkansas as expeditiously as practicable, but no later than March 1, 2009.

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

## IV. Proposed Action

Pursuant to CAA section 181(b)(2), EPA is proposing to find that the Memphis TN–AR ''marginal'' 8-hour Ozone Nonattainment Area failed to attain the 8-hour ozone NAAQS by June 15, 2007. If EPA finalizes its proposal, the Area will by operation of law be reclassified as a moderate 8-hour ozone nonattainment area. Pursuant to section 182(i) of the CAA, EPA is also proposing the schedule for submittal of the SIP revisions required for moderate areas once the area is reclassified. EPA proposes that the required SIP revisions for Tennessee and Arkansas be submitted as expeditiously as practicable, but no later than March 1, 2009.

## V. Statutory and Executive Order Reviews

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

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO. The Agency has determined that the finding of nonattainment would result in none of the effects identified in the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law.

*B. Paperwork Reduction Act*

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

*C. Regulatory Flexibility Act*

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

For purposes of assessing the impacts of this action on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. After considering the economic impacts of today's action on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules

with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation to why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

*E. Executive Order 13132: Federalism*

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

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

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

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

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

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

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

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

*I. National Technology Transfer Advancement Act*

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

and to adjust applicable deadlines. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action merely proposes to determine that the Memphis TN–AR Nonattainment Area has not attained by its applicable attainment date, and to reclassify the Memphis TN–AR Nonattainment Area as a moderate ozone nonattainment area and to adjust applicable deadlines.

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

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

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

Dated: October 9, 2007.

**Russell L. Wright, Jr.,**

*Acting Regional Administrator, Region 4.*

Dated: September 24, 2007.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. E7–20390 Filed 10–15–07; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### 43 CFR Part 10

**RIN 1024–AD68**

## Native American Graves Protection and Repatriation Act Regulations—Disposition of Culturally Unidentifiable Human Remains

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule specifies procedures for the disposition of culturally unidentifiable human remains in the possession or control of museums or Federal agencies, thus implementing the Native American Graves Protection and Repatriation Act of 1990 (Act). Publication of this document is intended to solicit comments from Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and members of the public before its publication as a final rule.

**DATES:** Written comments will be accepted through January 14, 2008.

**ADDRESSES:** You may submit comments, identified by the number RIN 1024–AD68, by any of the following methods:

—*Federal rulemaking portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

—*Mail to:* Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, Docket No. 1024–AC84, 1849 C Street, NW., (2253), Washington, DC 20240.

—*Hand deliver to:* Dr. Sherry Hutt, 1201 Eye Street, NW., 8th floor, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dr. Sherry Hutt, Manager, National NAGPRA Program, National Park Service, 1201 Eye Street, NW., 8th floor, Washington, DC 20240, telephone (202) 354–1479, facsimile (202) 371–5197.

**SUPPLEMENTARY INFORMATION:**

### Authority

Sections 8(c)(5) and (c)(7) of the Native American Graves Protection and Repatriation Act (Act) (25 U.S.C. 3001 *et seq.*) gives the Review Committee the responsibility for recommending specific actions for developing a process for disposition of culturally unidentifiable human remains and consulting with the Secretary of the Interior (Secretary) in the development of regulations to carry out the Act. Section 13 charges the Secretary with promulgating regulations to carry out the Act. Section 5(1) of the Archaeological Resources Protection Act (16 U.S.C. 470aa–mm) authorizes the Secretary to promulgate regulations providing for the ultimate disposition of archaeological resources and other resources removed under the Act of June 27, 1960 (the Reservoir Salvage Act, as amended, also known as the Archeological and Historic Preservation Act of 1974, 16 U.S.C. 469–469c–1) or the Act of June 8, 1906 (the Antiquities Act of 1906, as amended, 16 U.S.C. 431–433).

### Background

On November 16, 1990, President George Bush signed into law the Native American Graves Protection and Repatriation Act. The Act addresses the rights of lineal descendants, Indian tribes, and Native Hawaiian organizations to certain Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony. Section 8 of the Act established the Native American Graves Protection and Repatriation Review Committee of seven private citizens to monitor and review implementation of the inventory and identification process and repatriation activities required under the Act. Section 8(c)(5) charged the Review Committee with compiling an inventory of culturally unidentifiable human remains that are in the possession or control of museums or Federal agencies and recommending specific actions for developing a process for disposition of such remains. The inventory of culturally unidentifiable human remains and recommendations regarding their disposition relate only to human remains in the possession or control of museums and Federal agencies and not to human remains that are excavated or removed from Federal or tribal lands after November 16, 1990 under section 3 of the Act.

Current regulations implementing the Act require museums and Federal agencies to retain possession of culturally unidentifiable human remains until final regulations are promulgated or the Secretary recommends otherwise. The disposition of funerary objects associated with culturally unidentifiable human remains is not specifically addressed in the Act. During deliberations over recommendations regarding the disposition of culturally unidentifiable human remains, the Review Committee considered the intrinsic relationship of human remains to associated funerary objects and concluded that nothing in the Act precludes the voluntary disposition of these cultural items by museums or Federal agencies to the extent allowable by Federal law.

In 1994, the Review Committee began to formally solicit comments from Indian tribes, Native Hawaiian organizations, museums, and Federal agencies regarding the disposition of culturally unidentifiable human remains. The Review Committee developed its first draft of recommendations regarding the disposition of culturally unidentifiable human remains and associated funerary objects in February 1995. These draft recommendations were published for