

Dated: February 26, 1997.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the 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 F—California

2. Section 52.220 is amended by adding paragraph (c)(241) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(241) New and amended regulations for the following APCD were submitted on October 18, 1996 by the Governor's designee.

(i) Incorporated by reference.

(A) San Diego County Air Pollution Control District.

(I) Rules 2, Definitions; 67.0, Architectural Coatings; 67.1, Alternative Emission Control Plans; 67.2, Dry Cleaning Equipment Using Petroleum-Based Solvents; 67.3, Metal Parts and Products Coating Operations; 67.5, Paper, Film, and Fabric Coating Operations; 67.7, Cutback and Emulsified Asphalts; 67.12, Polyester Resin Operations; 67.15, Pharmaceutical and Cosmetic Manufacturing Operations; 67.16, Graphic Arts Operations; 67.17, Storage of Materials Containing Volatile Organic Compounds; 67.18, Marine Coating Operations; and 67.24, Bakery Ovens, adopted on May 15, 1996.

* * * * *

[FR Doc. 97-7690 Filed 3-26-97; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 81

[ME048-1-6997a; FRL-5802-3]

Designation of Areas for Air Quality Planning Purposes; Correction of Designation of Nonclassified Ozone Nonattainment Areas; States of Maine and New Hampshire

AGENCY: United States Environmental Protection Agency (USEPA or Agency).

ACTION: Direct final rule.

SUMMARY: The USEPA announces its decision to correct the ozone designations for the Sullivan and Belknap counties, New Hampshire nonattainment areas, and the portions of

Oxford, Franklin and Somerset counties in Maine designated nonattainment. The USEPA is publishing the designation correction of these areas to attainment/unclassifiable for ozone, pursuant to section 110(k)(6) of the Clean Air Act (the Act), which allows the USEPA to correct its actions. The rationale for this approval is set forth in this final rule; additional information is available at the address indicated below. In the proposed rules section of this **Federal Register**, the USEPA is proposing approval of and soliciting public comment on this action. If adverse comments are received on this direct final rule, the USEPA will withdraw this direct final rule and address the comments received in a subsequent final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**. No additional opportunity for public comment will be provided. Unless this direct final rule is withdrawn no further rulemaking will occur on this action.

DATES: This action will be effective May 27, 1997 unless notice is received by April 28, 1997 that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., (CAA) Boston, MA 02203. Copies of EPA's technical support document are available for public inspection during normal business hours, by appointment at: Office of Ecosystems Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333; and the New Hampshire Department of Environmental Services, 64 N. Main St., Concord, NH 03302.

FOR FURTHER INFORMATION CONTACT:

Richard P. Burkhart, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., (CAQ) Boston, MA 02203. Phone: 617-565-3578.

SUPPLEMENTARY INFORMATION:

I. Background

1. Background for Sullivan and Belknap Counties, New Hampshire

Pursuant to the 1977 amendments to the Clean Air Act (Act), the USEPA designated nonattainment areas with

respect to the 0.08 parts per million (ppm) photochemical oxidant National Ambient Air Quality Standard (NAAQS). For such areas, states submitted State Implementation Plans (SIPs) to control emissions and achieve attainment of the NAAQS. In New Hampshire, an area named the Merrimack Valley-Southern New Hampshire Interstate Air Quality Control Region (AQCR 121) was designated as nonattainment for photochemical oxidants on March 3, 1978 (43 FR 9013). On February 8, 1979 (44 FR 8202), the USEPA revised the NAAQS from 0.08 ppm to 0.12 ppm and the regulated pollutant from photochemical oxidants to ozone. Subsequently, on May 29, 1979, New Hampshire submitted a revised analysis which considered the change in the NAAQS and its affect on nonattainment designations (hereinafter referred to as "the May 1979, New Hampshire submittal").

The May 1979, New Hampshire submittal requested that the New Hampshire portion of the Merrimack Valley-Southern New Hampshire Interstate AQCR be designated nonattainment, even though the Federal ozone standard had changed, and there were no ozone monitoring data from the relevant portions of the AQCR. EPA approved the request on April 11, 1980 (45 FR 24869). AQCR 121 includes Belknap and Sullivan counties, along with other areas in both New Hampshire and Massachusetts whose attainment classification and status will be unchanged by this technical correction.

The May 1979, New Hampshire submittal was based on the revised Federal ozone standard of 0.12 ppm. Unfortunately, New Hampshire did not know the full extent of its ozone nonattainment problems, because, there were no monitors in either Belknap or Sullivan counties. Ozone monitors for AQCR 121 existed only in Keene, Manchester, Nashua, and Portsmouth during the period from 1973 to 1978. These sites did experience exceedances of the 0.12 ppm standard, but none are close enough to either Belknap or Sullivan county to indicate their air quality.

Upon the date of enactment of the 1990 amendments to the Clean Air Act, the New Hampshire portion of AQCR 121 retained its designation of nonattainment by operation of law pursuant to section 107(d). Pursuant to the section 181(a), nonattainment areas were further classified based on their monitored design value, as marginal, moderate, serious, severe or extreme. The nonattainment areas in New Hampshire were split into several

nonattainment areas and classified as follows: (1) the Portsmouth-Dover-Rochester area as serious, (2) the New Hampshire portion of the Boston-Lawrence-Worcester area as serious, (3) the Manchester area as marginal, and (4) Sullivan, Cheshire and Belknap counties, remained nonattainment with incomplete data. See 56 FR 56694, November 6, 1991.

2. Background for Portions of Franklin, Oxford and Somerset Counties, Maine

Pursuant to the 1977 amendments to the Clean Air Act (Act), an area in Maine named the Androscoggin Valley Interstate Air Quality Control Region (AQCR 107) was designated as nonattainment for photochemical oxidants by USEPA. On February 8, 1979 (44 FR 8202), the USEPA revised the NAAQS from 0.08 ppm to 0.12 ppm and the regulated pollutant from photochemical oxidants to ozone. Subsequently, on April 19, 1979 Maine submitted a revised analysis which considered the change in the NAAQS and its effects on designations (hereinafter referred to as "the April, 1979 Maine submittal").

The April 1979, Maine submittal requested that the Maine portion of the Androscoggin Valley Interstate AQCR be designated nonattainment, even though the Federal ozone standard had changed and no ozone monitoring data existed for the relevant portion of the AQCR. It is worth noting that Maine retained its own state standard to be 0.08 ppm ozone not to be exceeded more than once per year.¹ The USEPA approved the request for the AQCR to be designated nonattainment on February 19, 1980 (45 FR 10766). AQCR 107 includes portions of Oxford, Somerset and Franklin counties, along with other areas in both Maine and New Hampshire whose attainment classification and status will be unchanged by this technical correction.

Ambient ozone data for the State of Maine in the 1970's was severely limited. There were not any monitors in either of the three counties. An ozone monitor in Maine for AQCR 107 did exist in the Town of Unity for a short period in 1977. This site did not experience an exceedance of the 0.12 Federal ppm ozone standard, which is the applicable standard under the Act for the purposes of designating the federal attainment status of areas under Section 107.

Upon the date of enactment of the 1990 amendments to the Clean Air Act,

the areas that make up AQCR 107 retained their designation of nonattainment by operation of law pursuant to section 107(d). Nonattainment areas were further classified based on their monitored design value, pursuant to section 181(a), as marginal, moderate, serious, severe or extreme. The areas in Maine in AQCR 107 were split up and joined with other areas to form several nonattainment areas which were classified as follows: the Knox and Lincoln counties area as moderate, the Lewiston-Auburn area as moderate (which is Androscoggin and Kennebec counties), the Hancock and Waldo counties area as marginal, and portions of Oxford, Franklin and Somerset counties, remained nonattainment with incomplete data. See 56 FR 56694, November 6, 1991.

II. Summary of This Action

Section 110(k)(6) of the Clean Air Act provides the USEPA with the authority to correct designation determinations made in error.² The USEPA interprets Section 110(k)(6) to authorize the Agency to make corrections to a promulgated regulation when it is shown to EPA's satisfaction that:

(1) EPA clearly erred in failing to consider or inappropriately considered information made available to EPA at the time of the promulgation; or the information made available at the time of promulgation is subsequently demonstrated to have been clearly inadequate; and;

(2) other information persuasively supports a change in the regulation 57 FR 56763 (November 30, 1992)

The USEPA's earlier action approving the retention of the nonattainment designations for the Belknap and Sullivan counties in New Hampshire was in error. That action was based on the State's May 29, 1979 submittal. The USEPA believes that the information submitted by New Hampshire in the May, 1979 submittal did not provide enough data to designate these two areas nonattainment for ozone because it did not contain in-county ozone monitoring data showing violations of the 0.12 ppm NAAQS. Furthermore, in-county monitoring data collected from 1991–1996 in the Sullivan County

nonclassifiable areas do not demonstrate violations of the 0.12 ppm NAAQS.

The USEPA hereby determines that the information available at the time of the designation was clearly inadequate, and that the in-county monitoring data available since the original designation persuasively support a change in the designations. The USEPA is correcting this error by correcting the designations for these areas to attainment/unclassifiable.

Similarly, the USEPA's action approving the retention of the nonattainment designations for the portions of Oxford, Somerset and Franklin counties in Maine designated nonattainment was also in error. The USEPA's action was based on the April 19, 1979 Maine submittal. The USEPA believes that the information submitted by Maine was insufficient to designate these three areas nonattainment for ozone because it did not contain ozone monitoring data showing violations of the 0.12 ppm NAAQS. Furthermore, in-county monitoring data from 1991–1996 collected in those counties do not show violations of the 0.12 ppm federal NAAQS. Since the information available at the time of the designation was clearly inadequate and in-county monitoring data support a change in the designations, the USEPA is correcting this error by correcting the designations for these areas to attainment/unclassifiable.

In order to demonstrate a violation of the ozone NAAQS, the average annual number of expected exceedances of the NAAQS must be greater than 1.0 per calendar year. (See 40 CFR 50.9.) The USEPA reviewed the basis of the original ozone designation for these five areas. Ambient air quality monitoring data for ozone was retrieved from the Aerometric Information Retrieval System (AIRS). The USEPA found that none of the five nonattainment nonclassifiable areas in New Hampshire and Maine ever had ozone monitoring data above 0.12 ppm. More information, including the AIRS ozone data report for these areas and the Technical Support Document (TSD), is located in the docket for this rulemaking.

III. Rulemaking Action

Pursuant to section 110(k)(6) of the Clean Air Act (the Act), which allows the USEPA to correct its actions, the USEPA is promulgating a correction to the designation status of the Sullivan and the Belknap counties, New Hampshire nonattainment areas, and the portions of Oxford, Franklin and Somerset counties in Maine designated nonattainment. The public should be advised that this action is effective May

² It states: CORRECTIONS—Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

¹ The Maine Legislative has since set Maine's health based ozone standard to be equivalent to the Federal standard.

27, 1997. However, if notice is received by April 28, 1997 that someone submits adverse or critical comments, this action will be withdrawn, and a subsequent final rule will be published which will address the comments received.

The USEPA is publishing a separate document in today's issue of the **Federal Register** publication, which constitutes a "proposed approval" of the requested SIP revisions and clarifies this rulemaking will not be deemed final if timely adverse or critical comments are filed. The "direct final" approval shall be effective on May 27, 1997, unless the USEPA receives adverse or critical comments by April 28, 1997.

If the USEPA receives comments adverse to or critical of the approval discussed above, the USEPA will withdraw this approval before its effective date by publishing a subsequent **Federal Register** document which withdraws this final action. All public comments received will then be addressed in a subsequent rulemaking notice. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the USEPA hereby advises the public that this action will be effective on May 27, 1997.

IV. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, the USEPA 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, the USEPA 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. Correction of designation status of these areas to attainment under section 110(k)(6) of the Clean Air Act does not

impose any new requirements on small entities. Correction of designation status is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Therefore I certify that the approval of the redesignation request does not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the USEPA 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 the private sector, of \$100 million or more. Under Section 205, the USEPA 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 the USEPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The USEPA has determined that this correction action promulgated 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 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 (SBREFA), the USEPA 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 May 27, 1997. 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 19, 1997.

Carol M. Browner,
Administrator.

Part 81 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

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

Authority: 42 U.S.C. 7401—7671q.

2. In § 81.320 the ozone table is amended by revising entries for "Franklin County Area", "Oxford County Area", and "Somerset County Area" to read as follows:

§ 81.320 Maine.

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MAINE—OZONE

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Franklin County Area Franklin County (part)	May 27, 1997	Unclassifiable/Attainment		
*	*	*	*	*
Oxford County Area				

MAINE—OZONE—Continued

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
Oxford County (part)	May 27, 1997	Unclassifiable/Attainment		
* * *	* * *	* * *	* * *	* * *
Somerset County Area				
Somerset County (part)	May 27, 1997	Unclassifiable/Attainment		
* * *	* * *	* * *	* * *	* * *

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

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2. In § 81.330 the ozone table is amended by revising entries for “Belknap County” and “Sullivan County” to read as follows:

§ 81.330 New Hampshire.
* * * * *

NEW HAMPSHIRE—OZONE

Designated areas	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * *	* * *	* * *	* * *	* * *
Belknap County	May 27, 1997	Unclassifiable/Attainment		
* * *	* * *	* * *	* * *	* * *
Sullivan County	May 27, 1997	Unclassifiable/Attainment		
* * *	* * *	* * *	* * *	* * *

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

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[Docket No. 960612172-7054-02; I.D. 011697A]

RIN 0648-A121

Fisheries of the Northeastern United States; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues this final rule to correct and clarify 50 CFR part 648, which contains regulations implementing the fishery management plans (FMPs) for: Summer flounder, scup, and black sea bass; Atlantic sea scallops; Northeast multispecies; Atlantic surf clams and ocean quahogs; Atlantic mackerel, squid, and butterfish;

and Atlantic salmon. During the consolidation of these FMPs into one part (50 CFR part 648), unintended omissions and changes were made. This document corrects those errors.

EFFECTIVE DATE: March 24, 1997.

FOR FURTHER INFORMATION CONTACT:

Mary M. Tokarcik, Fisheries Management Specialist, 508-281-9326.

SUPPLEMENTARY INFORMATION: On July 3, 1996 (61 FR 34966), NMFS published a final rule that incorporated six separate CFR parts (50 CFR parts 625, 650, 651, 652, 655, and 657) into 50 CFR part 648. Subsequently, regulations implementing the scup and black sea bass FMPs were added to this part. In addition, 50 CFR parts 600, 601, 602, 603, 605, 611, 619, 620, and 621 were consolidated into 50 CFR part 600. These consolidations were called for under President Clinton's Regulatory Reinvention Initiative for comprehensive regulatory reform. Because 50 CFR part 648 was prepared concurrent with the implementation of Amendment 7 to the Northeast Multispecies Fisheries Management Plan, many changes from the proposed rule to the final rule implementing Amendment 7 were not included in the consolidated document. Also, errors occurred during the consolidation of 50 CFR parts 600 and

648 in references and dates and through unintended omissions and inclusions. This rule makes these corrections and clarifies sections of the regulations as follows:

In 50 CFR 600.10, the definition for “area of custody” is added.

In § 648.2, the definition for “Multispecies Monitoring Committee” is revised to clarify that no more than two state representatives can be appointed from all of the affected states.

In § 648.2, the scientific name for redfish is changed to *Sebastes fasciatus*.

In § 648.2, the definition for “Prior to leaving port” is revised to clarify when a vessel must begin a days-at-sea (DAS) trip under the call-in requirement. Also, the phrase “with respect to the call-in notification for NE multispecies” is revised to clarify that the definition is also applicable to scallop DAS vessels.

In § 648.2, the definition for “Target Total Allowable Catch” is put in alphabetical order.

In § 648.4(a)(1)(i)(E)(2), the assumptions for establishing net tonnage (NT) and gross registered tonnage (GRT) for vessels that are not required to be documented are in error and are removed.

In § 648.4(a)(6)(i)(B)(1), the deadline for application for the scup moratorium