

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.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

Under sections 202, 203, and 205, of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan or plan revision, the State and any affected local or tribal governments have elected to adopt the program provided for under section 182 of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. The rules being approved by this action will impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

This action has been classified as a Table 2 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 an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has

exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action approving Delaware's regulation on Bulk Gasoline Marine Tank Vessel Loading Facilities, must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. 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 in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 13, 1995.

W.T. Wisniewski,
Acting Regional Administrator, Region III.

40 CFR part 52, subpart I of chapter I, title 40 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 I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(53) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(53) Revisions to the Delaware Regulations on the control of volatile organic compound emissions from marine vessel transfer operations submitted on August 26, 1994 by the Delaware Department of Natural Resources & Environmental Control:

(i) Incorporation by reference.

(A) Letter of August 26, 1994 from the Delaware Department of Natural Resources & Environmental Control transmitting Regulation 24, "Control of Volatile Organic Compound Emissions", by renumbering existing Section 43, "Other Facilities that Emit Volatile Organic Compounds," to Section 50 and adding a new Section 43, "Bulk Gasoline Marine Tank Vessel Loading Facilities".

(B) Administrative changes to Section 50: renumbering existing Section 43 to Section 50, and Section 50(a)(1): renumbering 42 to 43; and the new Section 43, effective August 26, 1994.

(ii) Additional material.

(A) Remainder of August 26, 1994 State submittal pertaining to Regulation 24 referenced in paragraph (c)(53)(i) of this section.

[FR Doc. 95-18515 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[TN-146-1-7039a; FRL-5226-1]

Approval and Promulgation of Implementation Plans; Tennessee: Approval of Revisions to the Nashville-Davidson County Construction and Operation Permit Regulations for Minor Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Nashville-Davidson County portion of the Tennessee State Implementation Plan (SIP) to allow Nashville-Davidson County to issue Federally enforceable local operating permits (FELOP). On November 16, 1994, Nashville-Davidson County through the Tennessee Department of Environment and Conservation (TDEC) submitted a SIP revision fulfilling the requirements necessary for a FELOP program to become Federally enforceable. In order to extend the Federal enforceability of the Nashville-Davidson County FELOP program to hazardous air pollutants (HAP), EPA is also approving the County's FELOP program pursuant to section 112 of the Clean Air Act as amended in 1990 (CAA) so that the County may issue FELOP for HAP.

DATES: This final rule will be effective September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Gracy R. Danois, at the EPA Regional Office listed below. 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. Air and Radiation Docket and Information Center (Air Docket 6102),

U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

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

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

Metropolitan Government of Nashville and Davidson County, Metropolitan Health Department, Bureau of Environmental Health Services, 311 23rd Avenue North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION CONTACT:

Gracy R. Danois, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365. The telephone number is 404/347-3555, extension 4150. Reference file TN-146-1-7039.

SUPPLEMENTARY INFORMATION:

On November 16, 1994, Nashville-Davidson County through the TDEC submitted a SIP revision designed to make certain permits issued under the County's existing minor source operating permit program Federally enforceable pursuant to EPA requirements as specified in a **Federal Register** notice, "Requirements for the preparation, adoption, and submittal of implementation plans; air quality, new source review; final rules." (see 54 FR 22274, June 28, 1989).

Nashville-Davidson County will continue to issue permits which are not Federally enforceable under its existing minor source operating permit rules as it has done in the past. The SIP revision, which is the subject of this document, adds requirements to the County's current minor source operating permit program, which allows the County to issue FELOP. This voluntary SIP revision allows EPA and citizens under the CAA to enforce terms and conditions of the Nashville-Davidson County FELOP program. Operating permits that are issued under the County's FELOP program that is approved into the Nashville-Davidson County portion of the Tennessee SIP and under section 112(l) will provide Federally enforceable limits to air pollution source's potential to emit. Limiting a source's potential to emit through Federally enforceable operating permits can affect the applicability of Federal regulations, such as title V operating permits, New Source Review (NSR) preconstruction permits, Prevention of Significant Deterioration

(PSD) preconstruction permits for criteria pollutants and federal air toxics requirements mandated under section 112 of the CAA, to a source.

In the aforementioned June 28, 1989, **Federal Register** document, EPA listed five criteria necessary to make a State's¹ minor source operating permit program Federally enforceable and, therefore, approvable into the SIP. This revision satisfies the five criteria for Federal enforceability of the Nashville-Davidson County FELOP program.

The first criteria that must be met if a state's operating permit program is to become Federally enforceable is that the permit program must be approved into the SIP. On November 16, 1994, Nashville-Davidson County submitted, through TDEC, a SIP revision designed to meet the criteria for Federal enforceability. This action will approve these regulations into the Nashville-Davidson County portion of the Tennessee SIP, thereby, meeting the first criteria for Federal enforceability.

The second criteria for a state's operating permit program to become Federally enforceable is that the regulations approved into the SIP impose a legal obligation that operating permit holders adhere to the terms and limitations of such permits. The regulations of Nashville-Davidson County meet this criteria. The Metropolitan Code of Law (M.C.L.) Section 10.56.040.F, Paragraph 1 requires the following:

The source must agree in writing to be bound by a permit which specifies the more restrictive limit and to be subject to detailed monitoring, reporting and recordkeeping requirements that prove the source is in compliance with the applicable permit.

Hence, the second criteria for Federal enforceability is met.

The third criteria necessary for a state's operating permit program to become Federally enforceable is that the state operating permit program require that all emissions limitations, controls, and other requirements imposed by such permits will be at least as stringent as any other applicable limitations and requirements contained in the SIP or enforceable under the SIP, and that the program may not issue permits that waive, or make less stringent, any limitations or requirements contained in or issued pursuant to the SIP, or that are otherwise "Federally enforceable" (e.g. standards established under sections

¹ Various local air pollution programs operate air quality programs under their own regulations which are approved into the SIP. The reader should note that "State" operating permits programs encompass those local programs with jurisdiction over only part of a State as well as in Statewide programs.

111 and 112 of the Act). Nashville-Davidson County satisfies this criteria with the inclusion of two regulations: M.C.L. Section 10.56.040.F, Paragraph 2, which requires that "the permit limitations, controls, and other requirements imposed by permits will be as stringent as any other applicable limitations and requirements contained in the SIP enforceable under the SIP", and M.C.L. Section 10.56.040.D, which gives Nashville-Davidson County the authority to specify other permit requirements in addition to those contained in M.C.L. Section 10.56.040. Therefore, the County's regulations satisfy the third criteria for Federal enforceability.

The fourth criteria for a state's operating permit program to become Federally enforceable is that limitations, controls, and requirements in the operating permits are quantifiable, and otherwise enforceable as a practical matter. While a determination of what is practically enforceable will generally differ based on process type and emissions, the County has incorporated the requirements of the fourth criteria described above under M.C.L. Section 10.56.040.F, Paragraph 3. Therefore, the Nashville-Davidson County FELOP program satisfies the fourth criteria for Federal enforceability.

The fifth criteria for a state's operating permit program to become Federally enforceable requires that the permitting agency provide EPA and the public with timely notice of the proposal and issuance of such permits, and provide EPA, on a timely basis, with a copy of each draft and final permit intended to be federally enforceable. This process also must provide for an opportunity for public comment on the permit applications prior to issuance of the final permit. Nashville-Davidson County satisfies this criteria by including M.C.L. Section 10.56.040.F, Paragraphs 4 and 5, which require the County to provide a 30 day public comment period and to provide a copy of each draft and final permit to the Administrator. EPA notes that any permit which has not gone through an opportunity for public comment and EPA review in the Nashville-Davidson County FELOP program will not be Federally enforceable.

In addition to requesting approval into the SIP, Nashville-Davidson County has also requested approval of its FELOP program under Section 112(l) of the CAA for the purpose of creating Federally enforceable limitations on the potential to emit of HAP through the issuance of FELOP. Approval under section 112(l) is necessary because the proposed SIP approval discussed above

only extends to the control of criteria pollutants. Federally enforceable limits on criteria pollutants (e.g., VOC's or PM-10) may have the incidental effect of limiting certain HAP listed pursuant to section 112(b).² However, section 112 of the Act provides the underlying authority for controlling all HAP emissions.

EPA believes that the five approval criteria for approving FELOP programs into the SIP, as specified in the June 28, 1989, **Federal Register** document, are also appropriate for evaluating and approving the program under section 112(l). The June 28, 1989, document does not address HAP, because it was written prior to the 1990 amendments to section 112, not because it establishes requirements unique to criteria pollutants.

In addition to meeting the criteria in the June 28, 1989, document, a state program that addresses HAP must meet the statutory criteria for approval under section 112(l)(5). Section 112(l) allows EPA to approve a program only if it: (1) Contains adequate authority to assure compliance with any section 112 standards or requirements; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the CAA.

EPA plans to codify the approval criteria for programs limiting potential to emit of HAP, such as FELOP programs, through amendments to Subpart E of Part 63, the regulations promulgated to implement section 112(l) of the CAA. (See 58 FR 62262, November 26, 1993.) EPA currently anticipates that these regulatory criteria, as they apply to FELOP programs, will mirror those set forth in the June 28, 1989, document. The EPA currently anticipates that since FELOP programs approved pursuant to section 112(l) prior to the planned Subpart E revisions will have been approved as meeting these criteria, further approval actions for those programs will not be necessary.

EPA believes it has authority under section 112(l) to approve programs to limit the potential to emit of HAP directly under section 112(l) prior to this revision to Subpart E. Section 112(l)(5) requires the EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to

in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address every possible instance of approval under section 112(l). EPA has already issued regulations under section 112(l) that would satisfy any section 112(l)(2) requirement for rulemaking. Given the severe timing problems posed by impending deadlines set forth in "maximum achievable control technology" (MACT) emission standards under section 112 and for submittal of title V permit applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to promulgation of a rule specifically addressing this issue. EPA is therefore approving the Nashville-Davidson County FELOP program so that the County may begin to issue FELOP as soon as possible.

EPA believes that the Nashville-Davidson County FELOP program meets the approval criteria specified in the June 28, 1989 **Federal Register** document and in section 112(l)(5) of the CAA. As discussed previously in this document, the Nashville-Davidson County FELOP program meets the five criteria necessary for Federal enforceability.

EPA believes that the Nashville-Davidson County FELOP program contains adequate authority to assure compliance with section 112(l)(5) requirements. The program meets the third criterion of the June 28, 1989, document because the program does not permit any section 112 requirement to be waived. Sources that become minor through a permit issued pursuant to this program would still be required to meet the section 112 requirements applicable to nonmajor sources.

EPA believes that Nashville-Davidson County has demonstrated that it can provide adequate resources to support the FELOP program. EPA expects that resources will continue to be adequate to administer the portion of the County's minor source operating permit program under which FELOP will be issued, since Nashville-Davidson County has administered a minor source operating permit program for several years. EPA will monitor the County's implementation of its FELOP to ensure that adequate resources are in fact available. EPA also believes that the Nashville-Davidson County FELOP program provides for an expeditious schedule for assuring compliance with section 112 requirements. This program will be used to allow a source to establish a voluntary limit on potential

to emit to avoid being subject to a CAA requirement applicable on a particular date. Nothing in the Nashville-Davidson County FELOP program would allow a source to avoid or delay compliance with a CAA requirement if it fails to obtain an appropriate Federally enforceable limit by the relevant deadline. Finally, EPA believes it is consistent with the intent of section 112 and the CAA for states to provide a mechanism through which sources may avoid classification as a major source by obtaining a Federally enforceable limit on potential to emit.

With the addition of these provisions, the Nashville-Davidson County FELOP program satisfies all the requirements listed in the June 28, 1989, **Federal Register** document. EPA is approving this revision to the Nashville-Davidson County portion of the Tennessee SIP thus making the County's FELOP program Federally enforceable.

Final Action

In this action, EPA is approving the Nashville-Davidson County FELOP program. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective September 26, 1995 unless, by August 28, 1995, adverse or critical comments are received. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective September 26, 1995.

The Agency has reviewed this request for revision of the federally-approved SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. EPA has determined that this action conforms with those requirements.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607(b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1995. Filing a petition for reconsideration by the Administrator of

² The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAP to below 112 major source levels.

this final rule does not affect the finality of this rule for purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the CAA, 42 U.S.C. 7607 (b)(2).)

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

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

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

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds.

Union Electric Co. v. U.S. E.P.A., 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

Under Sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of \$100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

Through submission of this state implementation plan revision, the State

and any affected local or tribal governments have elected to adopt the program provided for under Section 112(l) of the Clean Air Act. These rules may bind State, local and tribal governments to perform certain actions and also require the private sector to perform certain duties. To the extent that the rules being approved by this action would impose no new requirements; such sources are already subject to these regulations under State law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. EPA has also determined that this final action does not include a mandate that may result in estimated costs of \$100 million or more to State, local, or tribal governments in the aggregate or to the private sector.

List of Subjects in 40 CFR Part 52

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

Dated: June 23, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52 of 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)(130) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(130) Revisions to minor source operating permit rules for Nashville-Davidson County submitted by the Tennessee Department of Environment and Conservation on November 16, 1994.

(i) Incorporation by reference.

(A) Metropolitan Code of Law (M.C.L.) Chapter 10.56, Section 040, Paragraph F, effective October 4, 1994.

(ii) Other material. None.

[FR Doc. 95-18518 Filed 7-27-95; 8:45 am]

BILLING CODE 6560-50-P

40 CFR Part 52

[NC-065-1-6431a; FRL-5226-7]

Approval and Promulgation of Implementation Plans: Approval of Revisions to the Mecklenburg County Portion of the North Carolina State Implementation Plan (SIP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the Mecklenburg County portion of the North Carolina State Implementation Plan (SIP) to allow the Mecklenburg County Department of Environment to issue Federally enforceable local operating permits (FELOP). On November 24, 1993, the Mecklenburg County Department of Environment through the North Carolina Department of Environment, Health, and Natural Resources (DEHNR) submitted a SIP revision fulfilling the requirements necessary to issue FELOP. The submittal conforms with the requirements necessary for a local agency's minor source operating permit program to become federally enforceable. In order to extend the Federal enforceability of local operating permits to hazardous air pollutants (HAP), EPA is also proposing approval of the Mecklenburg County minor source operating permit regulations pursuant to section 112 of the Act.

DATES: This final rule will be effective on September 26, 1995 unless adverse or critical comments are received by August 28, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to Scott Miller at the EPA Regional office listed below.

Copies of the material submitted by Mecklenburg County may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.
Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street NE., Atlanta, Georgia 30365.

North Carolina Department of Health, Environment and Natural Resources, Air Quality Section, P.O. Box 29535, Raleigh, North Carolina 27626.

FOR FURTHER INFORMATION CONTACT: Scott Miller, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental