

Pollution Control, effective November 10, 1993, except for the following parts:

- (A) Section 10.56.010, the definition of "regulated pollutant";
- (B) Section 10.56.040, Paragraph (F);
- (C) Section 10.56.050, Paragraphs (C), (D) and (E);
- (D) Section 10.56.080.
- (ii) Other material. None.

[FR Doc. 95-22145 Filed 9-8-95; 8:45 am]

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#### 40 CFR Part 52

[WI55-02-7015; FRL-5289-5]

#### Approval of the State Implementation Plan; Wisconsin

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On January 10, 1995, the United States Environmental Protection Agency (USEPA) proposed approval of the State Implementation Plan (SIP) revision request for the Milwaukee ozone nonattainment area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha counties), as submitted by the State of Wisconsin. The purpose of the revision is to offset any growth in emissions from growth in vehicle miles traveled (VMT), or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other measures, as needed to comply with Reasonable Further Progress (RFP) milestones of the Clean Air Act (Act). Wisconsin submitted the implementation plan revision to satisfy the statutory mandates, found in section 182 of the Act, which requires the State to submit a SIP revision that identifies and adopts specific enforceable Transportation Control Measures (TCM) to offset any growth in emissions from growth in VMT, or number of vehicle trips, in severe ozone nonattainment areas. The USEPA received no public comments on the above proposed approval. On May 5, 1995, USEPA finalized the first element of the VMT offset program for the Milwaukee area. This rule finalizes the approval of the second element of the VMT offset program for the Milwaukee area.

**EFFECTIVE DATE:** This action will be effective October 11, 1995.

**ADDRESSES:** Copies of the SIP revision, public comments and USEPA's responses are available for inspection at the following address: (It is recommended that you telephone Michael Leslie at (312) 353-6680 before visiting the Region 5 Office.) United

States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of this SIP revision is available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 260-7548.

#### FOR FURTHER INFORMATION CONTACT:

Michael G. Leslie, Regulation Development Section (AT-18J), Air Toxics and Radiation Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone Number (312) 353-6680.

#### SUPPLEMENTARY INFORMATION:

##### I. Background Information

Section 182(d)(1)(A) of the Act requires States that contain severe ozone nonattainment areas to adopt transportation control measures and transportation control strategies to offset growth in emissions from growth in VMT or number of vehicle trips and to attain reductions in motor vehicle emissions (in combination with other measures) as needed to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are set forth in 182(d)(1)(A) and discussed in the General Preamble to Title I of the Act (57 FR 13498 April 16, 1992).

As described in the proposal, section 182(d)(1)(A) sets forth three elements that must be met by a VMT Offset SIP. Under USEPA's alternative interpretation, the three required elements of section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP, also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides USEPA the authority to determine that the different elements of the SIP submissions are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow States to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement

to comply with the 15 percent periodic reduction requirement of the Act; and 3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

As noted in the January 10, 1995, proposal, the USEPA would not take final action on the second element until the State has submitted a complete 15 percent ROP plan. On July 13, 1995, the State of Wisconsin submitted a 15 percent ROP plan with fully enforceable rules that have been subject to public hearing. No TCMs were utilized in the ROP plan to meet the 15 percent reduction in emissions. On July 18, 1995, the USEPA determined that this ROP plan was complete.

##### II. Final Rulemaking Action

In this action, USEPA is approving the second element of the VMT offset SIP revision submitted by the State of Wisconsin. The third element of the Wisconsin VMT offset SIP will also be the subject of a future rulemaking.

This action has been classified as a Table 3 action 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 Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to any 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., 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, USEPA may certify that the rule will not have a significant economic 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.

The SIP approvals under section 110 and subchapter I, part D, of the Act 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 small entities affected.

Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. USEPA*, 427 U.S. 246, 256-66 (1976).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 13, 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)).

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 assess whether various actions undertaken in association with proposed or final regulations 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.

EPA's final action will relieve requirements otherwise imposed under the Clean Air Act and, hence does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act. This action also will not impose a 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.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Ozone.

Dated: August 17, 1995.

**Valdas V. Adamkus,**  
*Regional Administrator.*

40 CFR part 52, 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 YY—Wisconsin**

2. Section 52.2585 is amended by adding paragraph (h) to read as follows:

**§ 52.2585 Control strategy: Ozone.**

\* \* \* \* \*

(h) Approval—On November 15, 1993, the Wisconsin Department of Natural Resources submitted a revision to the ozone State Implementation Plan. The submittal pertained to a plan for forecasting VMT in the severe ozone nonattainment area of southeastern Wisconsin and demonstrated that Transportation Control Measures would not be necessary to meet the 15 percent Rate-of-Progress milestone.

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**40 CFR Parts 52 and 81**

[KY-069-3-6904a; FRL-5277-2]

**Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Commonwealth of Kentucky**

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

**ACTION:** Direct final rule.

**SUMMARY:** On November 13, 1992, the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet (Cabinet), submitted a maintenance plan and a request to redesignate the Lexington, Owensboro, Paducah, and Edmonson County areas from nonattainment to attainment for ozone (O<sub>3</sub>). Under the Clean Air Act (CAA), designations can be changed if sufficient data are available to warrant such changes and the redesignation request satisfies the criteria set forth in the CAA. In this action, EPA is approving the redesignation to attainment of the Lexington area (Fayette and Scott counties) and the associated maintenance plan because it meets the maintenance plan and redesignation requirements. EPA has approved the requests to redesignate to attainment and maintenance plans for the Owensboro, Edmonson County and Paducah areas. In this action, EPA is also approving the 1990 base year inventory for the Lexington marginal O<sub>3</sub> nonattainment area.

**DATES:** This final rule is effective November 13, 1995 unless adverse or critical comments are received by October 11, 1995. If the effective date is delayed, timely notice will be published in the **Federal Register**.

**ADDRESSES:** Written comments on this action should be addressed to Scott Southwick, 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, GA 30365

Commonwealth of Kentucky, Natural Resources and Environmental Protection Cabinet, Department for Environmental Protection, Division for Air Quality, 803 Schenkel Lane, Frankfort, KY 40601.

**FOR FURTHER INFORMATION CONTACT:** Scott Southwick of the EPA Region 4 Air Programs Branch at (404) 347-3555 extension 4207 and at the above address. Reference file KY-69-3-6904.

**SUPPLEMENTARY INFORMATION:** On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. (Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401-7671q). Under section 107(d)(1), in conjunction with the Governor of Kentucky, EPA designated the Lexington area as nonattainment because the area violated the O<sub>3</sub> standard during the period from 1987 through 1989 (See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.318).

The Lexington marginal O<sub>3</sub> nonattainment area (nonattainment area) more recently has ambient monitoring data that show no violations of the O<sub>3</sub> National Ambient Air Quality Standards (NAAQS), during the period from 1989 through 1991. In addition, there have been no violations reported for the 1992, 1993, or 1994 O<sub>3</sub> seasons. Therefore, in an effort to comply with the amended CAA and to ensure continued attainment of the NAAQS, on November 13, 1992, the Cabinet submitted for parallel processing an O<sub>3</sub> maintenance SIP for the nonattainment area and requested redesignation of the nonattainment area to attainment with respect to the O<sub>3</sub> NAAQS and EPA found the request complete. On November 24, 1992, the Cabinet submitted the Marginal Ozone Nonattainment Areas Projection Inventory 1990-2004 as an amendment to the SIP. On January 15, 1993, July 16, 1993, February 28, 1994, August 29, 1994, and June 14, 1995, the Cabinet submitted revisions addressing public and/or EPA comments on the